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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1956

No. 52

MYRON WIENER, PETITIONER,

vs.

THE UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

PETITION FOR CERTIORARI FILED DECEMBER 8, 1956
CERTIORARI GRANTED JANUARY 21, 1957

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1956

No. 615

MYRON WIENER, PETITIONER,

vs.

THE UNITED STATES

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

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[fol. 1] **IN THE UNITED STATES COURT OF CLAIMS**

No. 337-54

MYRON WIENER

v.

THE UNITED STATES OF AMERICA

PETITION—Filed August 20, 1954

To the Honorable United States Court of Claims:

The Petition of Myron Wiener, the plaintiff, by his attorney, I. H. Wachtel, respectfully shows and alleges as follows:

1. Jurisdiction is conferred upon this Court by Sections 1346 and 1491, Title 28, of U.S. Code.

2. The plaintiff is a citizen of the United States of America and is admitted to the Bar of the highest Court of the District of Columbia, the State of New York and the State of California.

3. The War Claims Commission (hereinafter also referred to as "Commission"), an independent body com-
[fol. 2] posed of three members—commissioners, appointed by the President with the advice and consent of the United States Senate, was created by the Congress by the War Claims Act of 1948, as amended, (62 Stat. 1240, 50 U.S.C.A., App. 2001-2013) hereinafter also referred to as the "Act" to carry into effect the legislative policies embodied in the aforesaid Act in accordance with the legislative standards therein prescribed and to perform as a legislative and/or judicial aid, among other things, the following duties and functions:

> A. Prescribe such rules and regulations as may be necessary to enable the Commission to carry out its functions and to delegate its functions to any member, officer or employee of the Commission, to give public notice of the time when and to limit the time within which, claims of the nature set forth in said Act may

be filed, to advise all persons entitled to file claims under the provisions of said acts of their rights thereunder and to assist them in the preparation and filing of their claims.

B. To receive and adjudicate according to law the claims described in said Act.

C. To receive and adjudicate according to law and provide for the payment of any claim filed by or on behalf of any civilian American citizen for detention benefits in accordance with the provisions of Section 5 of said Act and to certify to the Secretary of the Treasury for the payment out of the War Claims Fund established by said Act any such claims allowed by the Commission.

D. To receive and adjudicate according to law and to provide for the payment of any claim filed by any prisoner of war in accordance with the provisions of Section 6 of said Act and to certify to the Secretary of the Treasury for payment out of the War Claims Fund established by said act any such claims allowed by the Commission.

[fol. 3] E. To receive and adjudicate according to law and to provide for the payment of any claims filed by certain religious organizations in accordance with the provisions of Section 7 of said Act and to certify to the Secretary of the Treasury for the payment out of the War Claims Fund established by said Act any such claim allowed by the Commissioner.

F. To notify all claimants of the approval or denial of their claims and, if approved, notify such claimants of the amounts for which such claims are approved. And under regulations prescribed by the Commission afford a claimant a hearing before the Commission or its representatives with respect to any such claim and upon such hearing to affirm, modify or revise its former action with respect to any such claim including a denial or reduction in the amount theretofore allowed with respect to such claim.

G. The action of the Commission in allowing or denying any claim was to be final and conclusive on all questions of law and fact and not subject to review by any

other officials of the United States or by any Court, by mandamus, or otherwise.

H. Inquire into and report to the President for submission of such report to the Congress with respect to war claims arising out of World War II, other than claims which may be received and adjudicated under the other provisions of the Act and present in such report the Commission's:

(1) Findings on the estimated number and amount of such claims, classified by types and categories and the extent to which such claims have been or may be satisfied under international agreements or domestic or foreign laws, and;

[fol. 4] (2) Recommendations to the Congress with respect to (a) categories and type of claims, if any, which should be received and considered and the legal and equitable bases therefor: (b) the administrative method by which such claims should be considered and any priorities or limitations which should be applicable; (c) any limitations which should be applied to the allowances and payment of fees in connection with such claims; (d) such other recommendations as the Commission deems appropriate; and (e) such proposals for legislation, as the Commission deems appropriate for carrying out the recommendations made in such report.

(3) Said report when submitted to the Congress was required to be printed as a public document and was in fact transmitted to Congress by the Commission on May 3 1950 and printed as House Document No. 580, 81st Congress, 2nd Session.

(4) Not later than six months after its organization and every six months thereafter the Commission was required to make a report to the Congress concerning its operation under the Act.

I. For the purpose of any hearing, examination or investigation required under the said Act, the Commission was authorized to issue subpoenas requiring persons to appear and testify and to appear and produce documents or both and upon the application of a claim-

ant to issue to such claimant subpoena requiring the appearance and testimony of witnesses or the production of documents or both. In the event of the failure or refusal on the part of any person to comply with any subpoena to invoke the aid of the U. S. District Court within the jurisdiction of which the hearing, examination or investigation is being conducted or such claim- [fol. 5] ant resides or transacts business. To administer or take from any person an oath, affirmation or affidavit when such action is necessary or appropriate in the performance of the functions or activities of the Commission.

4. The terms of office of the members of the Commission were to expire only at the time fixed in Section 2 of the Act, as amended, for the winding up of the affairs of the Commission. The Commission was required to wind up its affairs at the earliest practicable time after the expiration of the time for filing claims but in no event later than three years after the expiration of such time. Public Law 16, 82nd Congress, approved April 5, 1951, provided that the limit of time within which claims may be filed with the Commission shall in no event be later than March 31, 1952.

5. The Plaintiff was duly appointed a member—commissioner, of the War Claims Commission by Harry S. Truman, as President of the United States of America, with the advice and consent of the United States Senate and took the constitutional oath of office applicable thereto on or about June 8, 1950, and thereupon entered upon his duties. From said date up to and including December 10, 1953, the Plaintiff duly performed all of his duties as a member—commissioner of the War Claims Commission, and continues to hold himself ready and available to perform the duties of said office.

6. On December 10 1953, the Commission had not wound up its affairs nor had the limit of time fixed by the Act for the winding up of the affairs of the Commission yet expired. On December 10, 1953, there was only one vacancy in the member—commissioners of the Commission, to wit: Daniel [fol. 6] E. Cleary, deceased.

7. On December 10, 1953, the Plaintiff received from the

President a communication, dated December 10, 1953, purporting to remove the Plaintiff as a member—commissioner of the War Claims Commission, as more fully appears from a true copy thereof, designated Exhibit A, attached hereto and made part hereof as if fully set forth herein. On December 14, 1953, the Plaintiff notified the President in writing that he lacked the legal or constitutional authority to remove the Plaintiff herein and that the Plaintiff holds himself available and ready to perform the duties of his office, as more fully appears from a true copy thereof designated Exhibit B attached hereto and made part hereof as if fully set forth herein.

8. The aforesaid removal of the Plaintiff by the President was in violation of, and in contravention of law and exceeded his legal and constitutional authority and therefore was null and void and of no force and effect.

9. On December 10, 1953, Dwight D. Eisenhower, President of the United States of America, while the Congress was in recess, appointed as members of the War Claims Commission, Raymond T. Armbruster, Whitney Gilliland and Mrs. Pearl Carter Pace. Thereafter, on or about February 15, 1954, six weeks after the reconvening of Congress, the President sent to the Senate of the United States the nominations of Raymond T. Armbruster, Whitney Gilliland, and Mrs. Pearl Carter Pace to be members of the War Claims Commission. The Senate of the United States has neither confirmed nor given its advice and consent to ap- [fol. 7] pointments of said Raymond T. Armbruster, Whitney Gilliland and Mrs. Pearl Carter Pace.

10. The appointments and nomination of Raymond T. Armbruster, Whitney Gilliland and Mrs. Pearl Carter Pace by the President of the United States was in violation of, and in contravention of law and exceeded his legal and constitutional authority and is null and void and of no force and effect.

11. On June 30, 1954, the War Claims Commission was abolished in manner provided for in the Reorganization Act of 1949 (5 U.S.C. 1332-9) and all of the functions of the War Claims Commission and of the members thereof transferred to the Foreign Claims Settlement Commission of the United States.

12. That as a result of all of the foregoing the Plaintiff was prevented from performing the duties imposed by said Act from December 10, 1953 through June 30, 1954 and failed to receive the compensation and emoluments provided by law in the amount of $8,254.00.

WHEREFORE, the plaintiff respectfully prays that this Honorable Court grant judgment against the defendant in favor of Plaintiff in the amount of $8,254.00, together with interest thereon and such other relief as may be just and proper.

I. H. Watchtel, Attorney for the Plaintiff, 917-15th Street, N. W., Washington, D. C.

[fol. 8] EXHIBIT A TO PETITION

THE WHITE HOUSE
Washington

December 10, 1953

DEAR MR. WIENER:

I regard it as in the national interest to complete the administration of the War Claims Act of 1948, as amended, with personnel of my own selection. To that end, Mr. C. F. Willis, Jr., of my staff transmitted my wish that you and your associate resign your commissions. I understand from Mr. Willis that you are unwilling to do so.

Accordingly, effective as of December 11, 1953, you are hereby removed from the office of Member of the War Claims Commission.

Sincerely, (S.) Dwight D. Eisenhower.

The Honorable Myron Wiener, Member, War Claims Commission, Tariff Commission Building, Seventh and E Streets, Washington, D. C.

EXHIBIT B TO PETITION

WAR CLAIMS COMMISSION
Washington 25, D. C.

December 14, 1953.

The President, The White House, Washington, D. C.

DEAR MR. PRESIDENT:

I have your letter of December 10, 1953, in which you state that, effective as of December 11, 1953, I am removed [fol. 9] from the office of Member of the War Claims Commission in order that you may appoint personnel of your own selection. I deny unequivocally your right and power to take such action.

While the exigencies of party politics and political commitments may make certain demands, I do not believe such circumstances should afford The President a basis for ignoring the Congressional mandate to each member of the Commission to assist the Congress in performing its traditional legislative functions of investigation and the judicial determination of the rights of innocent victims of World War II to relief under an Act of Congress.

The War Claims Act of 1948, as amended, was enacted by the Congress out of a strong conviction, having no relation to political considerations, to compensate in some measure American prisoners of war and others described in the law, for pain, suffering and tremendous financial loss caused by World War II. With that view in mind, and without regard for political advantage or sectional self-interest, the Congress authorized the establishment of a Commission to serve for a fixed term of years, to carry out without regard to partisan consideration or pressure what the Congress believed to be the country's obligation to do justice to an unfortunate segment of our population. The Members of the Commission have from the day of their appointment performed their duties in the secure knowledge that their sole responsibility was to make the investigations required to aid the Congress and to do justice and equity according to law to all who appeared before it. The duty to

adjudicate the rights granted by law transcends any sense of obligation to the appointing authorities and requires a dedicated adherence to the constitutional oath of office and the principles of justice, which can best exist in an atmosphere of certainty in tenure of office.

I take issue with the implications in your letter that only personnel of your selection can perform in the national interest.

[fol. 10] There are compelling and persuasive reasons why I must resist in the manner provided by law this attempt to remove me from office. Long before I took the constitutional oath of office as an official of the United States of America, I took an oath as a member of the Bar to uphold the Constitution and the laws of the United States. As such, and as a free citizen of the greatest democracy in the world, I feel it my duty as a matter of principle to prevent a violation of our country's laws. To do otherwise would be to acquiesce in the commission of an act and the creation of a precedent which could seriously impinge on the basic concept of the separation of powers on which this country was founded.

I regret, Mr. President, that I am compelled to advise you that within the limits of my capabilities, I shall continue to resist and deny the legality of your notice of removal and the appointment of new commissioners and their right to act and perform the functions set forth in the War Claims Act of 1948, as amended, and that in accordance with the orderly processes of law, will take such action as is therein provided to obtain an adjudication of the legality and propriety of your action. Meanwhile, I consider myself to be a Member of the War Claims Commission and shall hold myself in readiness to perform the duties of that office.

Respectfully, Myron Wiener.

[fol. 11] IN THE UNITED STATES COURT OF CLAIMS

[Title omitted]

ANSWER—Filed November 18, 1954

Defendant, for answer to the petition filed herein, as a First Defense to Plaintiff's Cause of Action, alleges as follows:

1. Asserts that the allegations contained in paragraph 1 of the petition are conclusions of law, which the defendant needs neither to admit nor deny, but if they be deemed allegations of material facts, they are denied.

2. Defendant's attorney has been unable to obtain knowledge or information sufficient to form a belief with respect to the allegations contained in paragraph 2 of the petition, which allegations accordingly are denied.

3. Admits the allegations contained in paragraph 3 of the petition that the War Claims Commission as created by the War Claims Act of 1948 (62 Stat. 1240) was com-
[fol. 12] posed of three persons appointed by the President by and with the advice and consent of the Senate, said Commission to perform the duties and functions set forth in said statute. Defendant alleges that the remaining allegations contained in paragraph 3 of the petition either are conclusions of law which the defendant needs neither to admit nor deny, or are references to statutory law which speak for themselves. Accordingly, defendant denies the allegations contained in paragraph 3 of the petition, except as admitted above.

4. In answer to the allegations contained in paragraph 4 of the petition, defendant admits that section 2 of the War Claims Act of 1948 made provision for the expiration of the terms of office of Members of the War Claims Commission and provided that the Commission wind up its affairs at the earliest practicable time after the expiration of time for filing claims but in no event later than three years after the expiration of such time. Defendant further admits that Public Law 16, 82d Congress, approved April 5, 1951, 65 Stat. 28, amended the War Claims Act of 1948 by providing that the limit of time within which claims may be filed with

the Commission shall in no event be later than March 31, 1952. Defendant asserts that the remaining allegations contained in paragraph 4 of the petition are conclusions of law, which defendant needs neither to admit nor deny, but if they be deemed allegations of material facts, they are denied.

5. In answer to the allegations contained in paragraph [fol. 13] 5 of the petition, defendant admits that on June 8, 1950, Harry S. Truman, then President of the United States of America, nominated, and, by and with the advice and consent of the Senate, appointed plaintiff a Member of the War Claims Commission, subject to the conditions prescribed by law, and that plaintiff took his oath of office and entered upon the duties of the office of Member of the War Claims Commission on or about June 8, 1950. Defendant admits that plaintiff continued to occupy said office until December 11, 1953. Defendant alleges that on December 10, 1953, Dwight D. Eisenhower, President of the United States, lawfully, properly and in the valid exercise of his constitutional power and authority as President of the United States removed said plaintiff, Myron Wiener, from the office of Member of the War Claims Commission, effective as of December 11, 1953, said plaintiff having refused to resign at the express wish of the President. Said removal was regarded by the President as in the national interest to complete the administration of the War Claims Act of 1948, as amended, with personnel of the President's own election, as is shown by Exhibit A to the petition filed herein. Except to the extent admitted by the foregoing statements, the allegations contained in paragraph 5 of the petition are denied.

6. In answer to the allegations contained in paragraph 6 of the petition, defendant admits that on December 10, 1953, the Commission had not wound up its affairs nor had [fol. 14] the limit of time fixed for the winding up of the affairs of the Commission expired. Defendant admits that on December 10, 1953, there was one vacancy in the War Claims Commission resulting from the death of Daniel W. Hoan, Chairman of said Commission, on December 3, 1953, and defendant alleges that on December 11, 1953 there were [illegible] vacancies on the Commission, the two additional

vacancies resulting from the lawful, valid, and constitutional removal by the President of plaintiff and Georgia L. Lusk. Except to the extent admitted by the foregoing statements the allegations contained in paragraph 6 of the petition are denied.

7. In answer to the allegations contained in paragraph 7 of the petition, defendant admits that on December 10, 1953, plaintiff received from the President of the United States a communication dated December 10, 1953, lawfully, properly and in the valid exercise of his constitutional power and authority as President of the United States, removing plaintiff from the office of member of the War Claims Commission, as more fully appears in a copy thereof attached to the petition as Exhibit A. Defendant also admits that the plaintiff sent a communication to the President dated December 14, 1953, copy of which is attached to the petition as Exhibit B. Defendant denies the remaining allegations contained in paragraph 7 of the petition.

8. Denies the allegations contained in paragraph 8 of the petition.

9. In answer to the allegations contained in paragraph 9 [fol. 15] of the petition, defendant admits that the President, while the Congress was in recess, on December 11, 1953, properly and lawfully appointed Raymond T. Armbruster, Whitney Gillilland and Mrs. Pearl Carter Pace, Members of the War Claims Commission during the pleasure of the President of the United States, for the time being and until the end of the next session of the Senate of the United States and no longer. Defendant further admits that upon the reconvening of the Congress, the President of the United States, on February 15, 1954, sent to the Senate of the United States the nominations of Raymond T. Armbruster, Whitney Gillilland and Mrs. Pearl Carter Pace, to be Members of the War Claims Commission, and that the Senate of the United States did not confirm said appointments by the date of abolition of the War Claims Commission. Except to the extent admitted by the foregoing statements, the allegations contained in paragraph 9 of the petition are denied.

10. Denies the allegations contained in paragraph 10 of the petition.

11. In answer to the allegations contained in paragraph 11 of the petition, defendant admits that on July 1, 1954, Reorganization Plan No. 1 of 1954 (19 F.R. 3985) prepared in accordance with the Reorganization Act of 1949, as amended (5 U.S.C. 133z to 133z-15) became effective and that Reorganization Plan No. 1 of 1954 provided that the War Claims Commission, including the offices of the Members of said Commission, was abolished and all functions of the War Claims Commission and of the members, officers [fol. 16] and employees thereof transferred to the Foreign Claims Settlement Commission of the United States. Defendant denies the remaining allegations contained in paragraph 11 of the petition.

12. In answer to the allegations contained in paragraph 12 of the petition, defendant admits that because of the lawful removal of plaintiff from the office of Member of the War Claims Commission on December 11, 1953, plaintiff performed no duties thereafter and received no compensation from the defendant for services performed since that date, save that defendant asserts that an annual leave lump sum payment for 428 hours was paid plaintiff, in the amount of $3,309.41. Defendant denies the remaining allegations contained in paragraph 12 of the petition.

13. Denies each and every allegation in the petition not heretofore specifically admitted, denied or qualified.

As and for a Second Defense to plaintiff's petition, defendant asserts the defense of *res judicata* under Rule 15b and alleges as follows:

14. In an action brought by plaintiff in the District Court of the United States for the District of Columbia on the same claim as that set forth in the petition, a final judgment was rendered for the defendant dismissing the action on the merits.

[fols. 17-30] WHEREFORE, defendant prays that the petition be dismissed with costs assessed against the plaintiff.

Warren E. Burger, Assistant Attorney General, Civil Division; Walter Kiechel, Jr., Attorney, Civil Division, Department of Justice.

[fol. 31-32] MINUTE ENTRY OF ARGUMENT AND SUBMISSION OF CASE—May 3, 1956 (omitted in printing)

[fol. 33] IN THE UNITED STATES COURT OF CLAIMS

No. 337-54

MYRON WIENER

v.

THE UNITED STATES

Mr. I. H. Wachtel for plaintiff.

Mr. Walter Kiechel, Jr., with whom was Mr. Assistant Attorney General George Cochran Doub, for defendant. Mr. Gerson B. Kramer was on the briefs.

OPINION—July 12, 1956

MADDEN, Judge, delivered the opinion of the court:

On June 8, 1950, the plaintiff was appointed a member of the War Claims Commission, to serve during the life of the Commission, which was to expire not later than March 31, 1955. On December 10, 1953, the plaintiff was removed by the President, and another person was appointed in his stead. The plaintiff alleges the President had no authority to remove him, and that he was at all times ready, willing, and able to perform the duties of his office. He sues for the salary he would have earned had he not been removed.

The President's power to remove has been considered by the Supreme Court in two fairly recent leading cases. In *Myers* v. *United States*, 272 U. S. 52, that court set forth the doctrine that the President has the inherent power to discretionarily remove an official or officer appointed by him and confirmed by the Senate, even though the appointment is for a fixed term, and even though the Act creating the office provided for removal for stated causes. However, in *Humphrey's Executor* v. *United States*, 295 U. S. 602, the court, after limiting the broad scope of the *Myers* case to purely executive officers, held that the President may not at

[fol. 34] his discretion remove an official who is a member of a quasi-legislative or quasi-judicial agency, when the Act creating the agency fixes a definite term of office and provides for removal for stated causes.

Hence, the first question we must consider is whether the War Claims Commission was a part of the executive branch of the Government. If this question is answered in the affirmative, then under the doctrine of the *Myers* case, there can be no doubt that the President had the power to discretionarily remove the plaintiff. If, on the other hand, it is determined that the War Claims Commission acted in a quasi-legislative or quasi-judicial capacity, the court must then determine whether the present case falls within the scope of the *Humphrey* decision.

Did the War Claims Commission exercise power predominantly legislative or judicial in character, or was it a part of the executive branch of the Government? If the latter, the President clearly had the power of removal.

The War Claims Commission was created by the War Claims Act of 1948, 62 Stat. 1240, 50 U. S. C. App. sec. 2001 *et seq.* Section 5 (b) of this Act provided for the adjudication of the claims of American citizens for detention benefits. It reads:

> The Commission is authorized to receive, adjudicate according to law, and provide for the payment of any claim filed by, or on behalf of, any civilian American citizen for detention benefits for any period of time subsequent to December 6, 1941, during which he was held by the Imperial Japanese Government as a prisoner, internee, hostage, or in any other capacity, or remained in hiding to avoid being captured or interned by such Imperial Japanese Government.

Section 6 (b) of the Act provided for the adjudication of claims of prisoners of war. It reads:

> The Commission is authorized to receive, adjudicate according to law, and provide for the payment of any claim filed by any prisoner of war for compensation for the violation by the enemy government by which he was held as a prisoner of war, or its agents, of its obligation to furnish him the quantity or quality of food to which

he was entitled as a prisoner of war under the terms of the Geneva Convention of July 27, 1929. The com- [fol. 35] pensation allowed to any prisoner of war under the provisions of this subsection shall be at the rate of $1 for each day he was held as a prisoner of war on which the enemy government or its agents failed to furnish him such quantity or quality of food. * * *

Section 7 provided for the adjudication of claims by religious organizations. It reads:

> The Commission is authorized to receive, adjudicate according to law, and provide for the payment of any claim filed by any religious organization functioning in the Philippine Islands and affiliated with a religious organziation in the United States, or by the personnel of any such Philippine organization, for reimbursement of expenditures incurred, or for payment of the fair value of supplies used, by such organization or such personnel for the purpose of furnishing shelter, food, clothing, hospitalization, medicines and medical services, and other relief in the Philippines to members of the armed forces of the United States or to civilian American citizens (as defined in section 5) [section 2004 of 50 USC Appendix] at any time subsequent to December 6, 1941, and before August 15, 1945. * * *

Section 11 gave the claimant the right to a hearing of his claim and made the decision of the Commission "final and conclusive on all questions of law and fact and not subject to review *by any other official* of the United States or *by any court by mandamus or otherwise* * * *." (Italics supplied.)

By Section 2(d) (64 Stat 449) the Commission was given the power to issue subpoenas and to administer oaths to witnesses.

All of the foregoing are powers such as are vested in courts of justice. In the performance of such duties the Commission was acting in a quasi-judicial capacity; or, perhaps, as an agent of Congress in discharge of the congressional obligation "to pay the Debts of the United States." Certainly in so doing it was not performing an executive function.

It is true that such powers are from time to time conferred on executive agencies, and the exercise of such powers does not make such agencies a part of the judicial branch of the Government. This is because the function of such agencies is primarily executive, and the performance of duties judicial in nature is incidental or ancillary to the discharge of their executive duties. But the War Claims Commission was [fol. 36] clothed with no executive powers. The powers conferred on it, to which we have heretofore referred, were wholly judicial, or, perhaps, legislative in character.

Other duties were also put upon the Commission, but they were not of an executive but of a legislative nature.

The claims provided for in the foregoing sections consisted of claims of civilian internees, prisoners of war, or of religious bodies. They were to be paid out of a War Claims Fund, made up of the proceeds of enemy property seized by the Alien Property Custodian. It was recognized that there were many other classes of claims, but no provision was made for their payment. However, in section 8 the Commission was directed to make a survey of these other claims and to report to Congress: (1) on the number and amount of them, classified by types and categories, and (2) the extent to which they might be settled by international agreement. The Commission was also directed to recommend (1) the types of claims that should be received and considered, supported by a statement as to the legal or equitable basis for their possible allowance, and (2) the method by which these claims should be considered, and the limitation of time that should be fixed for the filing of such claims. The Commission was also directed to draft a bill to be introduced in Congress to carry out its recommendations. There can be no doubt that in discharging this function the Commission acted as an agent of the Congress.

The fact that this report was to be submitted to the President is of no significance. It was to be submitted to him "for submission of such report to the Congress." The President was not requested to comment on the report; his sole function was to transmit it. He was no more than the depository designated to receive the report and to transmit it to the Congress. Presumably it was to be submitted to him only to take care of the eventuality that Congress might

have adjourned *sine die* at the time the Commission was ready to report.

Under section 9, the Commission was directed to make a report of its operations *to the Congress*. These reports were to cover the discharge of all the duties cast upon it, to wit, the adjudication of claims, and the survey of other claims the adjudication of which was not provided for, [fol. 37] preliminary to a recommendation for their disposition, and such recommendation.

Nowhere in the Act is there cast upon the Commission the discharge of any executive function. All its functions were of a nature either judicial or legislative.

We must next determine whether the removal of a member of such a commission is within the scope of the *Humphrey* decision.

The Federal Trade Commission Act, which was involved in the *Humphrey* case, provided that each commissioner appointed to the Federal Trade Commission by the President should continue in office for a definite number of years, but that any commissioner could "be removed by the President for inefficiency, neglect of duty, or malfeasance in office." The President requested Humphrey to resign from his position as commissioner and, when Humphrey refused to do so, the President removed him from office without assigning any cause therefor. Humphrey's executor sued in this court to recover the salary which was lost by reason of the removal. The case was certified by this court to the Supreme Court. That Court determined that the Federal Trade Commission was quasi-legislative and quasi-judicial in nature and not a part of the executive branch of the Government, and held that the President may not within his discretion remove an official of such an agency when the act creating the agency fixes a definite term of office and specifies causes for which the President may remove.

From the following language which appears at the conclusion of the *Humphrey* opinion, 295 U. S. at 632, it appears that the Supreme Court intended to limit the scope of the *Humphrey* decision to the precise situation then before it:

> To the extent that, between the decision in the *Myers* case, which sustains the unrestrictable power of the President to remove purely executive officers, and our

present decision that such power does not extend to an office such as that here involved, there shall remain a field of doubt, we leave such cases as may fall within it for future consideration and determination as they may arise.

[fol. 38] The Constitution is silent as to the power of the President to remove officials appointed by him. These voluminous opinions in the *Myers* case, and in the *Humphrey* case, give the details of the executive and congressional action, and the decisions of the courts, on this question, 'throughout our history.' The *Humphrey* decision showed that there had been a change in the attitude of the Supreme Court since the *Myers* decision. The case which we have to decide is different from both *Myers* and *Humphrey*. It resembles *Humphrey* in that the functions of the plaintiff's office were not executive, but quasi-judicial and quasi-legislative. But it differs from *Humphrey* in the important respect that Congress, in creating the War Claims Commission, did not place any limitation upon the President's power of removal.

If we pass over earlier periods in our history, including the period of conflict between Congress and President Johnson, and limit ourselves to relatively recent history, we find that in 1921, in the enactment of the Budget and Accounting Act, 42 Stat. 23, 31 U.S.C. 43, Congress placed limitations on the President's power to remove the Comptroller General. It provided stated grounds on which he might be removed and then said that he could be removed "for no other cause and in no other manner except by impeachment." In 1926, Congress, in creating the National Mediation Board, 44 Stat. 579, 45 U.S.C. 154, provided that a member of the Board might be "removed by the President for inefficiency, neglect of duty, malfeasance in office, or ineligibility, but for no other cause." In 1935, in the National Labor Relations Act, 49 Stat. 451, 29 U.S.C. 153(a), Congress created a Board whose functions would be largely quasi-judicial, and used substantially the same form of words as in the act creating the National Mediation Board.

In the Act of June 29, 1936, creating the United States Maritime Commission, 49 Stat. 1985, 46 U.S.C. 1111(a), Congress said "Any member may be removed by the Presi-

dent for neglect of duty or malfeasance in office." The Act of June 23, 1938, 52 Stat. 980, 49 U.S.C. 421, creating the Civil Aeronautics Board, used similar language as did also the Act of August 1, 1946, 60 Stat. 756, 42 U.S.C. 1802(a)(2) creating the Atomic Energy Commission.

[fol. 39] The Indian Claims Commission Act of August 13, 1946, 60 Stat. 1050, 25 U.S.C. 70b (b) provided that the members of the Commission should hold office during good behavior until the dissolution of the Commission, as thereinafter provided, and could "be removed by the President for cause after notice and opportunity to be heard."

The Act of September 23, 1950, 64 Stat. 997, 50 U.S.C. 791 (a) creating the Subversive Activities Control Board again used the careful language, including the words, "but for no other cause" used in the earlier acts creating the office of the Comptroller General, the National Mediation Board, and the National Labor Relations Board.

It seems to us that Congress, having used various forms of language in earlier and later important statutes, might have been expected to use some form of expression indicating its intent, whenever it intended to limit the President's power. But in the statute creating the War Claims Commission, 62 Stat. 1240, 50 U.S.C. App. 2001, Congress did not even use the unclear language which was the subject of litigation in the *Humphrey* case. It provided in subsection (c) that claims could be filed with the Commission no later than March 31, 1952, and in subsection (e) that the Commission should wind up its affairs no later than three years after the last date for filing claims.

Taking the case in its aspect most favorable to the plaintiff, we have an officer appointed to perform quasi-judicial and quasi-legislative functions, and for a term certain or which can be made certain. If the President had not the unlimited power to remove him, he could not be removed at all except by impeachment, since the statute stated no limited grounds upon which the President might remove him. We do not think that Congress had any such intent. To impose upon itself the obligation to resort to the cumbersome, time-consuming and rarely used method of impeachment would be a serious step indeed. If Congress had intended that the President should not have the unlimited power of

removal, it would most certainly have provided him with a limited power which would relieve Congress of the intolerable burden of an impeachment proceeding. Even in the case of Federal judges, constitutionally assured of tenure during good behavior, there is a recurring search in Congress for the discovery of some method which might be [fol. 40] permitted by the Constitution, of removing them for cause without the uncertain and harrowing experience of an impeachment proceeding.

Furthermore, we do not think that the asserted certain term of office, which is all that the plaintiff can find in the statute to rely on, shows an intent that the appointee should be irremovable. In its context, it seems to us to say that the Commission, from the time of its creation, must plan its work so that it will not have unfinished business when the expiration date occurs, because Congress does not intend to extend its life. The language seems to us to have been used, not to protect the members of the Commission in their tenure, but to protect the Treasury and the public against the perpetuation of an agency which was meant to be temporary.

The Supreme Court, in *Shurtleff* v. *United States*, 189 U.S. 311, 315, 316, said:

> To take away this power of removal in relation to an inferior office created by statute, although that statute provided for an appointment thereto by the President and confirmation by the Senate, would require very clear and explicit language. It should not be held to be taken away by mere inference or implication. • • • The right of removal would exist if the statute had not contained a word upon the subject. It does not exist by virtue of the grant, but it inheres in the right to appoint, unless limited by Constitution or statute. It requires plain language to take it away.

The Supreme Court found in the *Humphrey* case a Congressional intent, shown by the statutory language and the legislative history, to limit the President's power. That decision no doubt tempered the strict doctrine stated in the *Shurtleff* case. But it did not discard it to the extent that a court should conclude that the President's power had been

abrogated even though there was no evidence at all, or substantially no evidence, that Congress so intended. There is no evidence whatever of any such intent in relation to the statute under construction in the instant case.

Plaintiff's petition is dismissed.

It is so ordered.

LARAMORE, Judge; LITTLETON, Judge; and JONES, Chief Judge, concur.

[fol. 41] WHITAKER, Judge, dissenting:

The italicized part of the following quotation from the majority opinion points up the difference between my view and theirs:

> The case which we have to decide is different from both *Myers* and *Humphrey*. It resembles *Humphrey* in that the functions of the plaintiff's office were not executive, but quasi-judicial and quasi-legislative. *But it differs from Humphrey in the important respect that Congress, in creating the War Claims Commission, did not place any limitation upon the President's power of removal.*

The majority says that the President had the power to remove members of the War Claims Commission because Congress did not limit his power of removal; I say he has no power of removal of a quasi-legislative or quasi-judicial officer unless Congress confers this power on him. I say it is not a matter of limiting the President's power, because he did not have such power to begin with. If the power is not conferred by Congress, then the power does not exist.

I think this is the principle underlying the *Humphrey* decision. In that decision the Supreme Court said that the President could not remove a member of the Federal Trade Commission except for such cause as was specified by Congress, but in the *Myers* decision they had said that the President's power to remove a person in the executive department could not be limited by Congress. In other words, as to an executive officer, the power of removal is inherent in the office of President, but as to a quasi-legislative officer, there is no such inherent power, and, hence, the President possesses only such power as Congress confers on him.

There is no other way to harmonize the *Myers* and *Humphrey* decisions.

Such a distinction is compelled, I think, by the constitutional concept of the separation of powers between the executive and the legislative and judicial branches of the Government. The Constitution intended that each should be supreme in its own field, subject only to those checks and balances specifically set forth in the Constitution. If the President has the inherent power to remove a member of a body created by Congress to perform a legislative function, then Congress is not supreme in its own field, but is subordi- [fol. 42] nate to the supreme executive power. Likewise, if he has the inherent power to remove a member of a body created to perform a quasi-judicial function, then the judicial branch is not independent, but is subordinate to the will of the executive.

Since the War Claims Commission was a part of the judicial or legislative branch of the Government, or both, the President had no power to remove the members of that Commission unless the power to do so was conferred on him by Congress. The majority does not say Congress conferred the power; it says they failed to withhold it. I say, since Congress did not confer the power, the President did not have the power.

Findings of Fact

The court having considered the evidence, the report of Commissioner George H. Foster, and the briefs and argument of counsel, makes findings of fact as follows:

1. The plaintiff is a citizen of the United States and is now a resident of the District of Columbia. He is a lawyer who has been admitted to practice law in the highest courts of the States of California and New York, of the District of Columbia, and the United States Court of Claims.

2. On July 3, 1948, P. L. 896 was enacted (62 Stat. 1240). This act was known as the War Claims Act of 1948. It provided in part as follows:

> Sec. 2 (a). There is hereby established a commission to be known as the War Claims Commission (hereinafter referred to as the "Commission") and to be com-

posed of three persons to be appointed by the President, by and with the advice and consent of the Senate. At least two of the members of the Commission shall be persons who have been admitted to the bar of the highest court of any State, territory, or the District of Columbia. The members of the Commission shall receive compensation at the rate of $12,000 a year. The terms of office of the members of the Commission shall expire at the time fixed in subsection (d) for the winding up of the affairs of the Commission.

* * * * * * *

(c) The Commission may prescribe such rules and regulations as may be necessary to enable it to carry out its functions, and may delegate functions to any [fol. 43] member, officer, or employee of the Commission. The Commission shall give public notice of the time when, and the limit of time within which, claims may be filed, which notice shall be published in the Federal Register. The limit of time within which claims may be filed with the Commission shall in no event be later than two years after the date of enactment of this Act.[1]

(d) The Commission shall wind up its affairs at the earliest practicable time after the expiration of the time for filing claims, but in no event later than three years after the expiration of such time.

Sections 5, 6, 7, 8, and 9 of the act related to the duties of the Commission.

3. On June 8, 1950, Harry S. Truman, President of the United States, with the advice and consent of the Senate of the United States, appointed the plaintiff as a member of the War Claims Commission and authorized and empowered him to execute and fulfill the duties of that office according to law and to have and to hold the said office with all the powers, privileges and emoluments therein of right appertaining subject to the conditions prescribed by law.

---

[1] By Joint Resolution of April 5, 1951 (65 Stat. 28) the date of March 31, 1952, was fixed as the final date for filing claims.

On the same date, plaintiff took the oath of office and entered upon his duties as a member of the Commission.

4. On December 10, 1953, at a time when there was one vacancy in the membership of the Commission, the plaintiff received a letter from Dwight D. Eisenhower, President of the United States, reading as follows:

> "I regard it as in the national interest to complete the administration of the War Claims Act of 1948, as amended, with personnel of my own selection. To that end, Mr. C. F. Willis, Jr., of my staff transmitted my wish that you and your associate resign your commissions. I understand from Mr. Willis that you are unwilling to do so.
>
> Accordingly, effective as of December 11, 1953, you are hereby removed from the office of Member of the War Claims Commission.

5. On December 11, 1953, while the Congress was in recess the President appointed Raymond T. Armbruster, Whitney Gillilland, and Mrs. Pearl Carter Pace, members of the War Claims Commission during the pleasure of the [fol. 44] President for the time being and until the end of the next succeeding session of the Senate and no longer.

6. On December 14, 1953, the plaintiff notified the President in writing that he, the President, lacked the legal or constitutional authority to remove the plaintiff on the grounds set forth in the letter of December 10, 1953, and objected to the action of the President and advised him that the plaintiff holds himself available and ready to perform the duties of his office.

7. Upon the reconvening of the Congress, the President, on February 15, 1954, sent to the Senate the nominations of Raymond T. Armbruster, Whitney Gillilland, and Mrs. Pearl Carter Pace to be members of the War Claims Commission. The Senate did not confirm said appointments by the date of abolishment of the War Claims Commission.

8. On July 1, 1954, Reorganization Plan No. 1 of 1954, 68 Stat. 1279, became effective by virtue of which the War Claims Commission, including the offices of the members of said Commission, was abolished and all functions of the War Claims Commission and of the members, officers, and

employees thereof, were transferred to the Foreign Claims Settlement Commission of the United States.

9. The plaintiff continued to hold himself ready and available to perform the duties as a member of the War Claims Commission up to and including June 30, 1954, but as a result of the actions of the President, he was prevented from performing the duties of a member of the Commission from December 11, 1953, to June 30, 1954.

10. Plaintiff was on December 10, 1953, receiving compensation as a member of the War Claims Commission at the rate of $14,800 per annum. If plaintiff had performed the duties of the office as a member of the War Claims Commission from December 11, 1953, to and including June 30, 1954, he would have been entitled for that period to receive from the United States compensation in the amount of $8,197.06. On December 11, 1953, plaintiff was paid by the defendant the amount of $3,309.41 as a lump-sum payment for accrued annual leave. This was payment for 428 hours of accumulated annual leave. The record does not disclose the amount of leave taken by plaintiff.

[fol. 45] 11. On February 3, 1954, there was filed, in the United States District Court for the District of Columbia, Civil Action No. 447-54, captioned *United States of America*, on relation of *Myron Wiener, petitioner*, vs. *Raymond T. Armbruster, Whitney Gillilland, Pearl Carter Pace, respondents*, in which the petitioner applied for a writ in the nature of *quo warranto*, alleging that his removal by the President was in violation and in contravention of law, and exceeded his legal and constitutional authority and, therefore, was null and void and of no force and effect. The writ was issued and hearing was had upon respondents' motion to dismiss or in the alternative for summary judgment. On March 30, 1954, Judge Edward M. Curran, United States District Judge for the District of Columbia, in accordance with his opinion of March 25, 1954, that the act of the President in removing the relator, Myron Wiener, as a member of the War Claims Commission was valid and constitutional, ordered that the writ in the nature of *quo warranto* be quashed and the action be dismissed. An appeal was taken to the United States Court of Appeals for the District of Columbia but said appeal was dismissed by stipulation of the parties inasmuch as the abolishment of the War Claims

Commission under Reorganization Plan No. 1 of 1954 had rendered the action moot.

12. Plaintiff was engaged in the practice of law in Shanghai, China, from 1931 to 1941. He left Shanghai on November 27, 1941, en route to the United States and arrived in Manila on December 2, 1941, where he was later interned by the Japanese on January 1, 1942.

13. In the summer of 1943, plaintiff was given an opportunity to be repatriated by an exchange of prisoners between the Japanese and the United States Governments. Having elected to be repatrjated, plaintiff was transported by the Japanese from the Philippines to Goa, a Portuguese colony on the west coast of India, south of Bombay. At Mormugao, a port city in the colony of Goa, the Americans were exchanged for Japanese who had been transported from the United States aboard the *Gripsholm*, a Swedish ship chartered by the War Shipping Administration on behalf of the Department of State, for the purpose of repatriation of American citizens. Upon boarding the *Grips-* [fol. 46] *holm*, plaintiff was informed that he would be expected to pay for his passage and certain documents were presented to him, including a promissory note representing the estimated cost of passage from Goa to the United States. Plaintiff protested on the grounds that he had not been previously informed that he would be obliged to pay for the passage, and secondly, that the quarters assigned him were not those normally regarded as first class. Plaintiff signed the documents tendered to him at Mormugao in the knowledge that he would have to pay his own passage to the United States.

14. The promissory note signed by plaintiff at Mormugao, Portuguese India, on October 18, 1943, for his passage to the United States was in the amount of $575. Since plaintiff was not then in possession of any money, a cash advance in the amount of $50 was made to him aboard the *Gripsholm* on October 22, 1943, for which plaintiff signed another promissory note. The advance enabled plaintiff to buy necessary supplies at the ship's canteen. On November 3, 1943, when the *Gripsholm* was at Port Elizabeth, South Africa, plaintiff was advanced an additional sum of five

pounds in South African currency to enable him to secure a blood test which he needed at that time. Plaintiff signed a promissory note for five pounds, South African currency, which was the equivalent of $20.18 in United States dollars at the then rate of exchange. On November 15, 1943, at Rio de Janeiro, plaintiff was advanced the further sum of $15 for which he signed a promissory note. The promissory note signed by plaintiff for his passage contains the following statements:

> I have received today from the Special Disbursing Officer of the Department of State on the M. S. GRIPSHOLM, Mormugao, Portuguese India, Ticket No. 16859, of a value of U. S. Dollars $575.00 for passage aboard M. S. GRIPSHOLM from Mormugao to New York, which I hereby promise to repay without interest to the Treasurer of the United States upon demand in legal tender of the United States.
>
> I understand that my obligation to repay the sum hereinabove stated will not be discharged until the Treasurer of the United States actually receives in legal tender of the United States full repayment of that sum.

The other promissory notes signed by plaintiff contain language substantially the same except for the amounts.

[fol. 47] 15. The charge to plaintiff for this passage aboard the *Gripsholm* from Mormugao to New York was subsequently reduced from $575 to $548.85. The original figure was an estimate and the final charge was computed, on completion of the voyage, by prorating equally among all passengers the total cost of operation of *Gripsholm* from Mormugao to New York. All passengers aboard the *Gripsholm* were charged the same passage and the accommodations were allotted on a humanitarian basis, taking into consideration the age, physical condition and sex of the respective passengers. The payment for the *Gripsholm* was made by the Department of State through the War Shipping Administration. The United States Government made no profit on the operation of the *Gripsholm* and the repatriation of plaintiff and others.

16. Plaintiff was informed by letter dated May 9, 1944, from its assistant chief, Accounts Branch, Division of Budget and Finance, that the State Department held for collection promissory notes executed by the plaintiff in connection with his repatriation to the United States in the total amount of $634.03, that in accordance with the terms of the notes, a check or money order drawn payable to the order of the Secretary of State should be forwarded at the earliest possible date, and that upon receipt of payment the promissory notes would be cancelled and forwarded to plaintiff. This letter was sent to plaintiff at 3710 Fillmore Street, San Francisco, California, the address given by plaintiff upon his repatriation, such address appearing on each note as plaintiff's permanent address in the United States. A second request for the payment was made upon plaintiff by the Department of State by Statement No. 13478, dated October 8, 1948.

17. Plaintiff has not paid the sum of $634.03 to the defendant.

Conclusion of Law

Upon the foregoing findings of fact, which are made a part of the judgment herein, the court concludes as a matter of law that plaintiff is not entitled to recover, and his petition is dismissed.

[fol. 48] Proceedings Following Opinion of the Court.

On August 13, 1956, defendant filed a motion to amend the judgment.

On October 2, 1956, the court entered the following order on said motion:

Order Amending Judgment—October 2, 1956

This case comes before the court pursuant to defendant's motion filed August 13, 1956, to amend the judgment entered in this case on July 12, 1956, so as to include a judgment for defendant on its counterclaim in the sum of $634.03 with interest. The plaintiff has not opposed this motion and, upon consideration thereof,

It Is Ordered this second day of October, 1956, that the judgment of July 12, 1956, dismissing plaintiff's petition be and the same is amended so as to include judgment for de-

fendant on its counterclaim against plaintiff in the sum of six hundred thirty-four dollars and three cents ($634.03), together with interest thereof at the rate of four percent per annum from February 9, 1955, until date of payment.

By The Court,

(S.) Marvin Jones, Chief Judge.

[fols. 49-50] On October 30, 1956, defendant filed a motion for correction of judgment.

Said motion has not been acted upon by the court to date.

[fol. 51]. Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 52] In Supreme Court of the United States,
October Term, 1956

No. ——

Myron Wiener, Petitioner

vs.

United States of America

Order Extending Time to File Petition for Writ of Certiorari—October 3, 1956

Upon Consideration of the application of counsel for petitioner,

It Is Ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including December 8th, 1956.

Earl Warren, Chief Justice of the United States.

Dated this 3rd day of October, 1956.

[fol. 53] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed January 21, 1957

[Title omitted]

The petition herein for a writ of certiorari to the United States Court of Claims is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

(5396-7)

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IN THE

Supreme Court of the United States

October Term, 1956

No. 352

MYRON WIENER, *Petitioner*

v.

UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

I. H. WACHTEL
Counsel for Petitioner
917 15th Street, N.W.
Washington, D. C.

SPECIAL NOTE

The petitioner respectfully calls the attention of this Court to the following order issued by the U. S. Court of Claims after the printing of the within petition, and too late to alter the portions thereof relating to defendant's counterclaim:

IN THE UNITED STATES COURT OF CLAIMS

No. 337-54

MYRON WIENER

v.

THE UNITED STATES

Order

This case comes before the court on defendant's motion, filed October 30, 1956, for correction of the judgment entered July 12, 1956, as amended October 2, 1956, and plaintiff's motion, filed November 14, 1956, for separation of the issues and reconsideration of the judgment on defendant's counterclaim. Upon consideration thereof,

IT IS ORDERED this seventh day of December, 1956, that defendant's motion for correction of the judgment be and the same is denied without prejudice, and

IT IS FURTHER ORDERED that pursuant to plaintiff's motion the order of October 2, 1956, amending the judgment of July 12, 1956, so as to enter judgment for defendant on its counterclaim, is vacated and withdrawn, and the issue as to defendant's right to recover on its counterclaim is separated from that of plaintiff's right to recover on its petition, which petition stands dismissed pursuant to the opinion of July 12, 1956, and

IT IS FURTHER ORDERED that the parties, the plaintiff on or before January 7, 1957, and the defendant within fifteen days of that date, file briefs relative to the issue of defendant's right to recover on its counterclaim together with interest thereon.

BY THE COURT

MARVIN JONES
Chief Judge

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IN THE

Supreme Court of the United States

October Term, 1956

No.

MYRON WIENER, *Petitioner*

v.

UNITED STATES OF AMERICA

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

Petitioner, Myron Wiener, respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Claims entered in the above-entitled cause on July 12, 1956.

OPINION BELOW

The opinion of the United States Court of Claims (Appendix p. 1a) is reported in 142 Fed. Supp. 910.

JURISDICTION

The judgment of the United States Court of Claims, dismissing petitioner's complaint, was entered on July 12, 1956 (TR, p. 33)[1] and amended by allowing the respondent's counterclaim on October 2, 1956 (TR, p. 48). The jurisdiction of this Court is invoked under 28 U.S.C. 1255(1).

QUESTION PRESENTED

Does the President have the power to remove without cause and before the expiration of his term a member of a quasi-legislative and quasi-judicial commission, where the statute creating the commission does not enumerate any causes for removal?

STATUTES INVOLVED

The War Claims Act of 1948, as amended (62 Stat. 1240, 50 U.S.C.A. App. 2001-2006), provides in part:

> "Sec. 2(a). There is hereby established a commission to be known as the War Claims Commission (hereinafter referred to as the "Commission") and to be composed of three persons to be appointed by the President, by and with the advice and consent of the Senate. At least two of the members of the Commission shall be persons who have been admitted to the bar of the highest court of any State, territory, or the District of Columbia. The members of the Commission shall receive compensation at the rate of $12,000 a year. The terms of office of the members of the Commission shall expire at the time fixed in subsection (d) for the winding up of the affairs of the Commission.
>
> * * * * * *
>
> (c) The Commission may prescribe such rules and regulations as may be necessary to enable it

[1] The Chief Justice on Oct. 3, 1956 extended petitioner's time to file this petition until December 8, 1956.

to carry out its functions, and may delegate functions to any member, officer, or employee of the Commission. The Commission shall give public notice of the time when, and the limit of time within which, claims may be filed, which notice shall be published in the Federal Register. The limit of time within which claims may be filed with the Commission shall in no event be later than two years after the date of enactment of this Act.[2]

(d) The Commission shall wind up its affairs at the earliest practicable time after the expiration of the time for filing claims, but in no event later than three years after the expiration of such time."

STATEMENT

This case presents no issue of disputed facts[3]; the only issue is one of constitutional law.

The findings of the court below adequately and fully state the pertinent facts (TR, p. 42). These facts may be summarized as follows. On June 8, 1950, the petitioner was appointed a member of the War Claims Commission by the President of the United States by and with the advice and consent of the Senate to serve at an annual salary of $14,800, during the life of the Commission, which was to expire not later than March 31, 1955. He entered upon the performance of his office and was duly performing his duties when he received a letter, dated December 10, 1953, from Dwight D. Eisenhower, President of the United States, reading as follows:

I regard it as in the national interest to complete the administration of the War Claims Act

[2] By Joint Resolution of April 5, 1951 (65 Stat. 28) the date of March 31, 1952, was fixed as the final date for filing claims.

[3] The Government's counterclaim did involve disputes of fact, but that claim did not relate to petitioner's cause of action.

> of 1948, as amended with personnel of my own selection. To that end, Mr. C. F. Willis, Jr., of my staff transmitted my wish that you and your associate resign your commissions. I understand from Mr. Willis that you are unwilling to do so.
>
> Accordingly, effective as of December 11, 1953, you are hereby removed from the office of Member of the War Claims Commission.[4]

The petitioner thereafter, on December 14, 1953, notified the President in writing that the President lacked the legal or constitutional authority to remove the petitioner on the grounds set forth in the aforementioned letter and objected to the action of the President and advised him that petitioner holds himself available and ready to perform the duties of his office (TR, p. 44).[5] Thereafter, following *quo warranto* proceedings in the U. S. District Court for the District of Columbia and appeal to the United States Court of Appeals for the District of Columbia,[6] the petitioner on August 20, 1954 instituted suit in the United States Court of Claims. Issue having been joined by the interposition of an answer and counterclaim, trial was held before a commissioner of the United States Court of Claims, and on July 12, 1956, the United States Court of Claims dismissed the petition on the grounds set forth in its opinion (Appendix, p. 1a, TR, p. 33). Thereafter, upon motion made by the defendant below,

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[4] It is significant to note the similarity of this letter with that sent by President Franklin D. Roosevelt in the *Humphrey case*, (*infra*).

[5] The President nominated a successor, but the Senate never confirmed the appointment (TR, p. 44).

[6] The appeal was dismissed as moot since the War Claims Commission had been abolished (TR, p. 45).

the United States Court of Claims amended said judgment to include a judgment on the Government's counterclaim, having no bearing on petitioner's cause of action (TR, p. 48). On October 30, 1956, the defendant below again moved the court for a further amendment of the judgment relating to the counterclaim, but said motion has not been acted upon by said court as of December 4, 1956 (TR, p. 49).

REASONS FOR GRANTING WRIT

1. The decision of the court below raises one of the questions left open by this Court in *Humphrey's Ex'r.* v. *United States,* 295 U.S. 602, 632, where this Court said:

> To the extent that, between the decision in the Myers Case, which sustains the unrestrictable power of the President to remove purely executive officers, and our present decision that such power does not extend to an office such as that here involved, there shall remain a field of doubt, we leave such cases as may fall within it for future consideration and determination as they may arise.

Myers v. *United States,* 272 U.S. 52, involving a purely executive officer, this Court held that Congressional efforts to limit the power of removal were invalid. In *Humphrey's Ex'r.* v. *United States,* (*supra*), involving a quasi-legislative and quasi-judicial officer, this Court found that the President could only remove such an officer for the causes enumerated by Congress, holding that "illimitable power of removal is not possessed by the President in respect of officers of the character of those just named" (id. 629). The instant case, with one important exception, is identical to *Humphrey.* In both, the petitioners were officers of

agencies performing quasi-legislative and quasi-judicial functions. Both received almost identical letters removing them before the expiration of their term of office. Both questioned the power of the President to remove them. Both were appointed by a President of a prior administration; there the similarity ceases. In *Humphrey*, Congress enumerated the causes for which the President could remove an officer. In the instant case, Congress was completely silent on removal or curtailing term of office other than to establish that the term of office shall expire with the termination of the War Claims Commission. The majority opinion below appreciates and recognizes the difference but views the silence of Congress as a failure to "place any limitation upon the President's power of removal." The issue which this Court is asked to consider is clearly stated by Judge Whitaker in his dissenting opinion in the court below (Appendix, p. 9a):

> The majority says that the President had the power to remove members of the War Claims Commission because Congress did not limit his power of removal; I say he has no power of removal of a quasi-legislative or quasi-judicial officer unless Congress confers this power on him. I say it is not a matter of limiting the President's power, because he did not have such power to begin with. If the power is not conferred by Congress, then the power does not exist.

2. The decision of the court below presents a substantial and important Federal question. The plea that this Court consider and determine this question is not urged or prompted by any desire to secure to the petitioner or other members of the War Claims Commission the high office taken from them (all that can now be recovered are the emoluments thereof), but

rather the necessity to have this Court determine whether the President possesses as an incident of his office power to remove without cause officers of agencies presently performing quasi-legislative and quasi-judicial functions. If the President possesses the power to remove without cause, quasi-judicial or quasi-legislative officers, like the petitioner, he can with equal impunity remove officers of such agencies as Securities and Exchange Commission[7], Federal Communications Commission[8], Federal Power Commission[9], The U. S. Tariff Commission[10] and Commission of Fine Arts[11] since in each case the legislation creating the agency does not enumerate cause for removal and does not expressly grant the President power to remove such officers without cause. The decision below does not pose simply a question of construction of Congressional intent (possibly one of the collateral issues herein) but the fundamental issue as to whether the President possesses, by virtue of his constitutional authority to select and nominate public officers, any *inherent, implied,* or *residuum of power*[12] to remove without cause, quasi-legislative or quasi-judicial officers, simply because he wants personnel of his own selection performing such "non-executive" functions.

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[7] 15 U.S.C. 78(d).

[8] 47 U.S.C. 151.

[9] 16 U.S.C. 792.

[10] 19 U.S.C. 1330.

[11] 40 U.S.C. 104.

[12] Facets of this issue have been before the Court since *Marbury* v. *Madison*, 1 Cranch 137, and as recently as *Cole* v. *Young*, 351 U.S. 565, 568. See also *Youngstown Sheet & Tube* v. *Sawyer*, 343 U.S. 579.

3. The view expressed by the court below poses a grave threat to the maintenance of *each of the three general departments of government entirely free from the control or coercive influence, direct or indirect, of either of the others.* This Court has stated "* * * *that one who holds his office only during the pleasure of another cannot be depended upon to maintain an attitude of independence against the latter's will.*"[13] The impact of the decision below is broad in its applicability. It affects not only the agencies named above but poses a threat to the continued development of independent thought and consideration in bi-partisan and non-political boards, commissions and agencies, performing quasi-legislative and quasi-judicial functions traditionally outside the scope of executive control and responsibility.

The extent to which the Chief Executive can impinge on the independence of such bodies without a mandate from Congress, concerns the basic structure of our form of government and should be now considered by this Court. The opportunity to circumscribe the *field of doubt* that remained after *Humphrey* is now before this Court for *consideration* and *determination.*

CONCLUSION

The issues herein involve a substantial and important question of Federal law which should be decided by this Court.

Respectfully submitted,

I. H. WACHTEL
Counsel for Petitioner

[13] *Humphrey's Ex'r.* v. *United States*, (*supra*).

APPENDIX

Opinion Below

IN THE UNITED STATES COURT OF CLAIMS

No. 337-54

(Decided July 12, 1956)

MYRON WIENER v. THE UNITED STATES

Mr. I. H. Wachtel for plaintiff.

Mr. Walter Kiechel, Jr., with whom was *Mr. Assistant Attorney General George Cochran Doub*, for defendant. *Mr. Gerson B. Kramer* was on the briefs.

OPINION

MADDEN, *Judge*, delivered the opinion of the court:

On June 8, 1950, the plaintiff was appointed a member of the War Claims Commission, to serve during the life of the Commission, which was to expire not later than March 31, 1955. On December 10, 1953, the plaintiff was removed by the President, and another person was appointed in his stead. The plaintiff alleges the President had no authority to remove him, and that he was at all times ready, willing and able to perform the duties of his office. He sues for the salary he would have earned had he not been removed.

The President's power to remove has been considered by the Supreme Court in two fairly recent leading cases. In *Myers* v. *United States*, 272 U. S. 52, that court set forth the doctrine that the President has the inherent power to discretionarily remove an official or officer appointed by him and confirmed by the Senate, even though the appointment is for a fixed term, and even though the Act creating the office provided for removal for stated causes. However, in *Humphrey's Executor* v. *United States*, 295 U. S. 602, the court, after limiting the broad scope of the *Myers* case to

purely executive officers, held that the President may not at his discretion remove an official who is a member of a quasi-legislative or quasi-judicial agency, when the Act creating the agency fixes a definite term of office and provides for removal for stated causes.

Hence, the first question we must consider is whether the War Claims Commission was a part of the executive branch of the Government. If this question is answered in the affirmative, then under the doctrine of the *Myers* case, there can be no doubt that the President had the power to discretionarily remove the plaintiff. If, on the other hand, it is determined that the War Claims Commission acted in a quasi-legislative or quasi-judicial capacity, the court must then determine whether the present case falls within the scope of the *Humphrey* decision.

Did the War Claims Commission exercise power predominantly legislative or judicial in character, or was it a part of the executive branch of the Government? If the latter, the President clearly had the power of removal.

The War Claims Commission was created by the War Claims Act of 1948, 62 Stat. 1240, 50 U.S.C. App. sec. 2001 *et seq.* Section 5(b) of this Act provided for the adjudication of the claims of American citizens for detention benefits. It reads:

> The Commission is authorized to receive, adjudicate according to law, and provide for the payment of any claim filed by, or on behalf of, any civilian American citizen for detention benefits for any period of time subsequent to December 6, 1941, during which he was held by the Imperial Japanese Government as a prisoner, internee, hostage, or in any other capacity, or remained in hiding to avoid being captured or interned by such Imperial Japanese Government.

Section 6 (b) of the Act provided for the adjudication of claims of prisoners of war. It reads:

> The Commission is authorized to receive, adjudicate according to law, and provide for the payment of any

> claim filed by any prisoner of war for compensation for the violation by the enemy government by which he was held as a prisoner of war, or its agents, of its obligation to furnish him the quantity or quality of food to which he was entitled as a prisoner of war under the terms of the Geneva Convention of July 27, 1929. The compensation allowed to any prisoner of war under the provisions of this subsection shall be at the rate of $1 for each day he was held as a prisoner of war on which the enemy government or its agents failed to furnish him such quantity or quality of food. * * *

Section 7 provided for the adjudication of claims by religious organizations. It reads:

> The Commission is authorized to receive, adjudicate according to law, and provide for the payment of any claim filed by any religious organization functioning in the Philippine Islands and affiliated with a religious organization in the United States, or by the personnel of any such Philippine organization, for reimbursement of expenditures incurred, or for payment of the fair value of supplies used, by such organization or such personnel for the purpose of furnishing shelter, food, clothing, hospitalization, medicines and medical services, and other relief in the Philippines to members of the armed forces of the United States or to civilian American citizens (as defined in section 5) [section 2004 of 50 USC Appendix] at any time subsequent to December 6, 1941, and before August 15, 1945. * * *

Section 11 gave the claimant the right to a hearing of his claim and made the decision of the Commission "final and conclusive on all questions of law and fact and not subject to review *by any other official* of the United States or *by any court by mandamus or otherwise* * * *." (Italics supplied.)

By Section 2 (d) (64 Stat. 449) the Commission was given the power to issue subpoenas and to administer oaths to witnesses.

All of the foregoing are powers such as are vested in courts of justice. In the performance of such duties the Commission was acting in a quasi-judicial capacity; or,

perhaps, as an agent of Congress in discharge of the congressional obligation "to pay the Debts of the United States." Certainly in so doing it was not performing an executive function.

It is true that such powers are from time to time conferred on executive agencies, and the exercise of such powers does not make such agencies a part of the judicial branch of the Government. This is because the function of such agencies is primarily executive, and the performance of duties judicial in nature is incidental or ancillary to the discharge of their executive duties. But the War Claims Commission was clothed with no executive powers. The powers conferred on it, to which we have heretofore referred, were wholly judicial, or, perhaps, legislative in character.

Other duties were also put upon the Commission, but they were not of an executive but of a legislative nature.

The claims provided for in the foregoing sections consisted of claims of civilian internees, prisoners of war, or of religious bodies. They were to be paid out of a War Claims Fund, made up of the proceeds of enemy property seized by the Alien Property Custodian. It was recognized that there were many other classes of claims, but no provision was made for their payment. However, in section 8 the Commission was directed to make a survey of these other claims and to report to Congress: (1) on the number and amount of them, classified by types and categories, and (2) the extent to which they might be settled by international agreement. The Commission was also directed to recommend (1) the types of claims that should be received and considered, supported by a statement as to the legal or equitable basis for their possible allowance, and (2) the method by which these claims should be considered, and the limitation of time that should be fixed for the filing of such claims. The Commission was also directed to draft a bill to be introduced in Congress to carry out its recommendations. There can be no doubt that in discharging

this function the Commission acted as an agent of the Congress.

The fact that this report was to be submitted to the President is of no significance. It was to be submitted to him "for submission of such report to the Congress." The President was not requested to comment on the report; his sole function was to transmit it. He was no more than the depository designated to receive the report and to transmit it to the Congress. Presumably it was to be submitted to him only to take care of the eventuality that Congress might have adjourned *sine die* at the time the Commission was ready to report.

Under section 9, the Commission was directed to make a report of its operations *to the Congress*. These reports were to cover the discharge of all the duties cast upon it, to wit, the adjudication of claims, and the survey of other claims the adjudication of which was not provided for, preliminary to a recommendation for their disposition, and such recommendation.

Nowhere in the Act is there cast upon the Commission the discharge of any executive function. All its functions were of a nature either judicial or legislative.

We must next determine whether the removal of a member of such a commission is within the scope of the *Humphrey* decision.

The Federal Trade Commission Act, which was involved in the *Humphrey* case, provided that each commissioner appointed to the Federal Trade Commission by the President should continue in office for a definite number of years, but that any commissioner could "be removed by the president for inefficiency, neglect of duty, or malfeasance in office." The President requested Humphrey to resign from his position as commissioner and, when Humphrey refused to do so, the President removed him from office without assigning any cause therefor. Humphrey's executor sued in this court to recover the salary which was lost by reason of the removal. The case was certified by this court to the Supreme Court. That Court determined

that the Federal Trade Commission was quasi-legislative and quasi-judicial in nature and not a part of the executive branch of the Government, and held that the President may not within his discretion remove an official of such an agency when the act creating the agency fixes a definite term of office and specifies causes for which the President may remove.

From the following language which appears at the conclusion of the *Humphrey* opinion, 295 U. S. at 632, it appears that the Supreme Court intended to limit the scope of the *Humphrey* decision to the precise situation then before it:

> To the extent that, between the decision in the *Myers* case, which sustains the unrestrictable power of the President to remove, purely executive officers, and our present decision that such power does not extend to an office such as that here involved, there shall remain a field of doubt, we leave such cases as may fall within it for future consideration and determination as they may arise.

The Constitution is silent as to the power of the President to remove officials appointed by him. The voluminous opinions in the *Myers* case, and in the *Humphrey* case, give the details of the executive and congressional action, and the decisions of the courts, on this question, throughout our history. The *Humphrey* decision showed that there had been a change in the attitude of the Supreme Court since the *Myers* decision. The case which we have to decide is different from both *Myers* and *Humphrey*. It resembles *Humphrey* in that the functions of the plaintiff's office were not executive, but quasi-judicial and quasi-legislative. But it differs from *Humphrey* in the important respect that Congress, in creating the War Claims Commission, did not place any limitation upon the President's power of removal.

If we pass over earlier periods in our history, including the period of conflict between Congress and President Johnson, and limit ourselves to relatively recent history,

we find that in 1921, in the enactment of the Budget and Accounting Act, 42 Stat. 23, 31 U. S. C. 43, Congress placed limitations on the President's power to remove the Comptroller General. It provided stated grounds on which he might be removed and then said that he could be removed "for no other cause and in no other manner except by impeachment." In 1926, Congress, in creating the National Mediation Board, 44 Stat. 579, 45 U. S. C. 154, provided that a member of the Board might be "removed by the President for inefficiency, neglect of duty, malfeasance in office, or ineligibility, but for no other cause." In 1935, in the National Labor Relations Act, 49 Stat. 451, 29 U. S. C. 153 (a), Congress created a Board whose functions would be largely quasi-judicial, and used substantially the same form of words as in the act creating the National Mediation Board.

In the Act of June 29, 1936, creating the United States Maritime Commission, 49 Stat. 1985, 46 U. S. C. 1111 (a), Congress said "Any member may be removed by the President for neglect of duty or malfeasance in office." The Act of June 23, 1938, 52 Stat. 980, 49 U. S. C. 421, creating the Civil Aeronautics Board, used similar language as did also the Act of August 1, 1946, 60 Stat. 756, 42 U. S. C. 1802 (a) (2) creating the Atomic Energy Commission.

The Indian Claims Commission Act of August 13, 1946, 60 Stat. 1050, 25 U. S. C. 70b (b) provided that the members of the Commission should hold office during good behavior until the dissolution of the Commission, as thereinafter provided, and could "be removed by the President for cause after notice and opportunity to be heard."

The Act of September 23, 1950, 64 Stat. 997, 50 U. S. C. 791 (a) creating the Subversive Activities Control Board again used the careful language, including the words, "but for no other cause" used in the earlier acts creating the office of the Comptroller General, the National Mediation Board, and the National Labor Relations Board.

It seems to us that Congress, having used various forms of language in earlier and later important statutes, might

have been expected to use some form of expression indicating its intent, whenever it intended to limit the President's power. But in the statute creating the War Claims Commission, 62 Stat. 1240, 50 U. S. C. App. 2001, Congress did not even use the unclear language which was the subject of litigation in the *Humphrey* case. It provided in subsection (c) that claims could be filed with the Commission no later than March 31, 1952, and in subsection (e) that the Commission should wind up its affairs no later than three years after the last date for filing claims.

Taking the case in its aspect most favorable to the plaintiff, we have an officer appointed to perform quasi-judicial and quasi-legislative functions, and for a term certain or which can be made certain. If the President had not the unlimited power to remove him, he could not be removed at all except by impeachment, since the statute stated no limited grounds upon which the President might remove him. We do not think that Congress had any such intent. To impose upon itself the obligation to resort to the cumbersome, time-consuming and rarely used method of impeachment would be a serious step indeed. If Congress had intended that the President should not have the unlimited power of removal, it would most certainly have provided him with a limited power which would relieve Congress of the intolerable burden of an impeachment proceeding. Even in the case of Federal judges, constitutionally assured of tenure during good behavior, there is a recurring search in Congress for the discovery of some method which might be permitted by the Constitution, of removing them for cause without the uncertain and harrowing experience of an impeachment proceeding.

Furthermore, we do not think that the asserted certain term of office, which is all that the plaintiff can find in the statute to rely on, shows an intent that the appointee should be irremovable. In its context, it seems to us to say that the Commission, from the time of its creation, must plan its work so that it will not have unfinished busi-

ness when the expiration date occurs, because Congress does not intend to extend its life. The language seems to us to have been used, not to protect the members of the Commission in their tenure, but to protect the Treasury and the public against the perpetuation of an agency which was meant to be temporary.

The Supreme Court, in *Shurtleff* v. *United States*, 189 U. S. 311, 315, 316, said:

> To take away this power of removal in relation to an inferior office created by statute, although that statute provided for an appointment thereto by the President and confirmation by the Senate, would require very clear and explicit language. It should not be held to be taken away by mere inference or implication. * * * The right of removal would exist if the statute had not contained a word upon the subject. It does not exist by virtue of the grant, but it inheres in the right to appoint, unless limited by Constitution or statute. It requires plain language to take it away.

The Supreme Court found in the *Humphrey* case a Congressional intent, shown by the statutory language and the legislative history, to limit the President's power. That decision no doubt tempered the strict doctrine stated in the *Shurtleff* case. But it did not discard it to the extent that a court should conclude that the President's power had been abrogated even though there was no evidence at all, or substantially no evidence, that Congress so intended. There is no evidence whatever of any such intent in relation to the statute under construction in the instant case.

Plaintiff's petition is dismissed.

It is so ordered.

LARAMORE, *Judge*; LITTLETON, *Judge*; and JONES, *Chief Judge*, concur.

WHITAKER, *Judge*, dissenting:

The italicized part of the following quotation from the majority opinion points up the difference between my view and theirs:

> The case which we have to decide is different from both *Myers* and *Humphrey*. It resembles *Humphrey* in that the functions of the plaintiff's office were not executive, but quasi-judicial and quasi-legislative. *But it differs from Humphrey in the important respect that Congress, in creating the War Claims Commission, did not place any limitation upon the President's power of removal.*

The majority says that the President had the power to remove members of the War Claims Commission because Congress did not limit his power of removal; I say he has no power of removal of a quasi-legislative or quasi-judicial officer unless Congress confers this power on him. I say it is not a matter of limiting the President's power, because he did not have such power to begin with. If the power is not conferred by Congress, then the power does not exist.

I think this is the principle underlying the *Humphrey* decision. In that decision the Sepreme Court said that the President could not remove a member of the Federal Trade Commission except for such cause as was specified by Congress, but in the *Myers* decision they had said that the President's power to remove a person in the executive department could not be limited by Congress. In other words, as to an executive officer, the power of removal is inherent in the office of President, but as to a quasi-legislative officer, there is no such inherent power, and, hence, the President possesses only such power as Congress confers on him.

There is no other way to harmonize the *Myers* and *Humphrey* decisions.

Such a distinction is compelled, I think, by the constitutional concept of the separation of powers between the executive and the legislative and judicial branches of the Government. The Constitution intended that each should be supreme in its own field, subject only to those checks and balances specifically set forth in the Constitution. If the President has the inherent power to remove a member of a body created by Congress to perform a legislative

function, then Congress is not supreme in its own field, but is subordinate to the supreme executive power. Likewise, if he has the inherent power to remove a member of a body created to perform a quasi-judicial function, then the judicial branch is not independant, but is subordinate to the will of the executive.

Since the War Claims Commission was a part of the judicial or legislative branch of the Government, or both, the President had no power to remove the members of that Commission unless the power to do so was conferred on him by Congress. The majority does not say Congress conferred the power; it says they failed to withhold it. I say, since Congress did not confer the power, the President did not have the power.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. ~~515~~ 52

MYRON WIENER, *Petitioner*

v.

UNITED STATES OF AMERICA

Petition for a Writ of Certiorari to the United States Court of Claims

REPLY BRIEF FOR PETITIONER

I. H. WACHTEL
Counsel for Petitioner

IN THE

Supreme Court of the United States

OCTOBER TERM, 1956

No. 615

MYRON WIENER, *Petitioner*

v.

UNITED STATES OF AMERICA

Petition for a Writ of Certiorari to the United States Court of Claims

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REPLY BRIEF FOR PETITIONER

I

The respondent, in its brief in opposition, directed its attention primarily to a discussion of the merits of the case, and has nowhere addressed itself to the importance and substantiality of the Federal question presented. This ingenuous approach should not be

permitted to obscure the fact that (1) the respondent has nowhere disclaimed, denied or answered the petitioner's contention that the decision below applies to and affects such important agencies as Securities and Exchange Commission, Federal Power Commission, Federal Communications Commission and U. S. Tariff Commission[1]; (2) that the broad sweep and scope of the decision below impinges on the doctrine of separation of powers; and (3) that the decision below goes further than any decision of this Court in expressing the extent of Executive control over quasi-judicial and quasi-legislative functions through the exercise of the power of removal.

II

The respondent would have us accept this Court's decision in *Myers* v. *United States*, 272 U.S. 52, as holding that the President "may in his discretion remove any executive official whose nomination and appointment are made by him" (Br. in Opp. p. 4) and that *Humphrey's Ex'r.* v. *United States*, 295 U. S. 602 reemphasized "the well-established principle that absent Congressional limitation, the removal power of the President is absolute." (Br. in Opp. p. 7) But this Court did not go that far.

In its decision in *Humphrey* this Court made it plain that "The *Myers* decision affirming the power of

[1] While not precisely in the same category as these important boards and commissions, the U. S. District Judges at Hawaii and Puerto Rico are similarly affected by the decision below. The judges of these courts are, as distinguished from most district court judges, appointed and hold office not "during good behavior" but for a term of years with no causes for removal enumerated. 28 U.S.C. 134(a).

the President alone to make the removal is confined to purely executive officers." (id., p. 631) The officers involved in this case were not *executive* officers; they were, as the Court below found after careful consideration, *quasi-judicial and quasi-legislative officers.*[2] In *Humphrey's Ex'r* v. *United States, supra*, this Court held only that "the unrestricted power of the President to remove purely executive officers * * * does not extend to an office such as that here involved * * * " [i.e., Federal Trade Commissioner] 295 U. S. at 632. Nor can it be said the issues in this case are governed by the decision in *Humphrey;* there, the statute enumerated the causes for which the President could remove an officer, but in the instant case the statute was silent with regard to removal.

Does it therefore follow that when the Congress fixes a term but does not enumerate *any* causes for which the President can remove; that the petitioner as well as members of other boards, commissions, and certain District judges (similarly situated), not "charged with the enforcement of policy, except the policy of law;" whose duties "are neither political nor

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[2] The Court of Claims devoted one-third of its opinion to an exhaustive and detailed analysis of the functions and responsibilities of the War Claims Commission and concluded that the Commission "was acting in a quasi-judicial capacity; or, perhaps as an agent of Congress. * * * The powers conferred upon it * * * were wholly judicial, or, perhaps, legislative in character. * * * Other duties were also put upon the Commission * * * not of an executive but of a legislative nature. * * * There can be no doubt that in discharging this function the Commission acted as an agent of the Congress. * * *. Nowhere in the Act is there cast upon the Commission the discharge of any executive function. All of its functions were of a nature either judicial or legislative" (App. p. 3a, et seq.).

executive but predominantly quasi-judicial and quasi-legislative", 295 U. S. at 624, are no longer entirely free from the "remotest influence direct or indirect," of the President? This issue is one which involves a fundamental question affecting the separation of powers, lying in "a field of doubt,"[3] which has not heretofore been decided by this Court.

III

The respondent contends the decision below involves simply the determination of Congressional intent, requiring only the application of a rule of statutory construction: that "a statute would not be interpreted as attempting to limit the power of removal in the absence of clear and express language to that end." (Br. in Opp., p. 6) It relies for support on *Parsons* v. *United States*, 167 U. S. 234 and *Shurtleff* v. *United States*, (*supra*) as support for this proposition. Both of these cases, however, involved executive officers where it was necessary for this Court to ascertain whether the Congress intended to restrict their removal in order to determine the validity of a statute. When the Government made the same argument and urged the same authorities upon this Court in the *Humphrey* case, this Court said the rule in *Shurtleff* was *exceptional* and the occasion for its application in prior cases *plainly and wholly different*

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[3] To the extent that, between the decision in the Myers case, which sustains the unrestrictable power of the President to remove purely executive officers, and our present decision that such power does not extend to an office such as that here involved, there shall remain a field of doubt, we leave such cases as may fall within it for future consideration and determination as they may arise. (295 U.S. at 632).

from a situation involving quasi-judicial and quasi-legislative officers. This Court then held it could ascertain whether Congress intended to restrict removal from either the language of the statute, consideration of the character of the commission, and its legislative history.[4]

The issue in the instant case is not whether the silence of Congress with regard to causes for removal, deprives the President of power to remove, but rather whether the absence in the Act of any enumeration of causes for removal must be construed as either a grant or acknowledgment of the existence of the power to remove quasi-judicial or quasi-legislative officers without cause before the expiration of their term. Where does the President derive his powers over officers who are not within the orbit of his executive functions or responsibilities?[5] The answer is not to be found in a rule of statutory construction applicable to *executive officers*, but in an analysis of the Constitutional concepts of the interrelation of judicial, legislative

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[4] This proceeding is neither the time nor the place to argue the merits. However, the Government at page 8 of its brief urges that the debates and hearings before the Congress do not contain "• • • the slightest expression of any purpose • • • to limit in any way the executive power of removal." It is necessary therefore to suggest that it overlooks, at least one prior draft of this legislation (H.R. 4404, 80th Cong., 1st Sess.) which gave the President the authority to curtail the life of the Commission, and thus, the term of its members; which grant of authority was significantly excluded from the law as finally adopted. cf. *Penn R. Co.* v. *International Coal Co.*, 230 U.S. 184, 198.

[5] Presidential power if any "must stem either from an Act of Congress or from the Constitution itself." *Youngstown Sheet and Tube* v. *Sawyer*, 343 U.S. 579, 585.

and executive authority, using as a frame of reference the doctrine of separation of powers in the Constitution.[6]

CONCLUSION

The decision below vitally affects the status and independence of important existing boards and commissions and a number of District Court Judges; it impinges substantially on the doctrine of separability; extends the doctrine of the *Humphrey* case to areas this Court left for future determination; and therefore involves a substantial Federal question which should be considered and determined by this Court.

For the foregoing reasons and those contained in the Petition, the petitioner respectfully prays that the Writ of Certiorari to the United States Court of Claims be granted.

Respectfully submitted,

I. H. WACHTEL
Counsel for Petitioner

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[6] The fundamental necessity of maintaining each of the three general departments of government entirely free from the control of coercive influence, direct or indirect, of either of the others, has often been stressed and is hardly open to serious question. So much is implied in the very fact of the separation of the powers of these departments by the Constitution, and in the rule which recognizes their essential coequality. The sound application of a principle that makes one master in his own house precludes him from imposing his control in the house of another who is master there. (295 U.S. at p. 629).

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 52

MYRON WIENER, *Petitioner,*

v.

UNITED STATES OF AMERICA

On Writ of Certiorari to the United States Court of Claims

BRIEF FOR THE PETITIONER

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 52

MYRON WIENER, *Petitioner*,

v.

UNITED STATES OF AMERICA

On Writ of Certiorari to the United States Court of Claims

BRIEF FOR THE PETITIONER

OPINION BELOW

The opinion of the Court of Claims (R. 13) is reported in 136 C. Cls. 827, 142 Fed. Supp. 910.

JURISDICTION

The judgment of the United States Court of Claims dismissing the petitioner's complaint was entered on July 12, 1956 (R. 13) and amended on October 2, 1956 by allowing the respondent judgment on its counterclaim (R. 28).[1] On

[1] On January 7, 1957, the Court of Claims vacated and withdrew the judgment on the counterclaim and separated the issues involved therein from the issues before this court.

October 3, 1956, by order of the Chief Justice (R. 29), the petitioner's time for filing a petition for writ of certiorari was extended to December 8, 1956. The petition for writ of certiorari was filed on December 8, 1956 and was granted on January 21, 1957 (R. 30), 77 S. Ct. 382. The jurisdiction of this Court rests upon 28 U.S.C. 1255(1).

QUESTION PRESENTED

Does the President have the power to remove at his pleasure, before the expiration of his term, an officer of a quasi-legislative and quasi-judicial commission, where the statute creating the commission does not enumerate any causes for removal?

CONSTITUTIONAL PROVISIONS INVOLVED

ARTICLE I, Section 1.—All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.

ARTICLE I, Section 8.—* * * To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

ARTICLE II, Section 1.—The executive Power shall be vested in a President of the United States of America * * *.

ARTICLE II, Section 2.—* * * and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law: but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments. * * *

ARTICLE II, Section 3.—* * * he shall take care that the Law be faithfully executed * * *.

STATUTES INVOLVED

The War Claims Act of 1948, as amended (62 Stat. 1240, 50 U.S.C. App. 2001-2006), (hereafter referred to as the Act), provides in part:

"Sec. 2(a). There is hereby established a commission to be known as the War Claims Commission (hereinafter referred to as the "Commission") and to be composed of three persons to be appointed by the President, by and with the advice and consent of the Senate. At least two of the members of the Commission shall be persons who have been admitted to the bar of the highest court of any State, territory, or the District of Columbia. The members of the Commission shall receive compensation at the rate of $12,000 a year. The terms of office of members of the Commission shall expire at the time fixed in subsection (d) for the winding up of the affairs of the Commission.

. . . . . .

(c) The Commission may prescribe such rules and regulations as may be necessary to enable it to carry out its functions, and may delegate functions to any member, officer, or employee of the Commission. The Commission shall give public notice of the time when, and the limit of time within which, claims may be filed, which notice shall be published in the Federal Register. The limit of time within which claims may be filed with the Commission shall in no event be later than two years after the date of enactment of this Act.[2]

(d) The Commission shall wind up its affairs at the earliest practicable time after the expiration of the time for filing claims, but in no event later than three years after the expiration of such time."[3]

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[2] By Joint Resolution of April 5, 1951 (65 Stat. 28) the date of March 31, 1952, was fixed as the final date for filing claims.

[3] By Public Law 696, 81st Cong., 2nd Session, this subsection (d) was redesignated subsection (e).

STATEMENT

No issue of disputed facts is involved herein.[4] The findings of the court below (R. 22), its opinion (R. 13) and the pleadings and exhibits thereto (R.1) reveal the following facts, circumstances and events.

The War Claims Commission was created by the War Claims Act *(supra)*. On June 8, 1950, the petitioner was appointed a member of the War Claims Commission by the President of the United States, by and with the advice and consent of the Senate, to serve at an annual salary of $14,800, during the remainder of the life of said Commission, which was to expire not later than March 31, 1955.

The petitioner (a lawyer who has been admitted to practice law in the highest courts of the States of California and New York, the District of Columbia and the United States Court of Claims) entered upon the performance of his office and was duly performing his duties when he received a letter, dated December 10, 1953, from the President, reading as follows:

> I regard it as in the national interest to *complete the administration* of the War Claims Act of 1948, as amended with personnel of my own selection. To that end, Mr. C. F. Willis, Jr., of my staff transmitted my wish that you and your associate *resign your commissions*. I understand from Mr. Willis that you are unwilling to do so.
>
> Accordingly, effective as of December 11, 1953, you are hereby removed from the office of Member of the War Claims Commission.[5] (emphasis added).

The President on December 11, 1953 and while Congress was in recess appointed three persons as members of the War Claims Commission to serve during the pleasure of the President for the time being and until the end of the

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[4] The Government's counterclaim does involve disputes of fact, but that claim does not relate to petitioner's cause of action.

[5] It is significant to note the similarity of this letter with that sent by the President in the *Humphrey* case *(infra)*.

next succeeding session and no longer.[6] The petitioner on December 14, 1953, notified the President in writing, as follows:

> I have your letter of December 10, 1953, in which you state that, effective as of December 11, 1953, I am removed from the office of Member of the War Claims Commission in order that you may appoint personnel of your own selection. I deny unequivocally your right and power to take such action.
>
> While the exigencies of party politics and political commitments may make certain demands, I do not believe such circumstances should afford The President a basis for ignoring the Congressional mandate to each member of the Commission to assist the Congress in performing its traditional legislative functions of investigation and the judicial determination of the rights of innocent victims of World War II to relief under an Act of Congress.
>
> The War Claims Act of 1948, as amended, was enacted by the Congress out of a strong conviction, having no relation to political considerations, to compensate in some measure American prisoners of war and others described in the law, for pain, suffering and tremendous financial loss caused by World War II. With that view in mind, and without regard for political advantage or sectional self-interest, the Congress authorized the establishment of a Commission to serve for a fixed term of years, to carry out without regard to partisan consideration or pressure what the Congress believed to be the country's obligation to do justice to an unfortunate segment of our population. The Members of the Commission have from the day of their appointment performed their duties in the secure knowledge that their sole responsibiltiy was to make the investigations required to aid the Congress and to do justice and equity according to law to all who appeared before

[6] Upon the reconvening of the Congress, the President, on February 15, 1954, sent to the Senate the nominations of Raymond T. Armbruster, Whitney Gillilland, and Mrs. Pearl Carter Pace to be members of the War Claims Commission. The Senate did not confirm said appointments by July 1, 1954, the date on which the War Claims Commission was abolished (R. 24) pursuant to Reorganization Plan 1 of 1954, 68 Stat. 1279.

it. The duty to adjudicate the rights granted by law transcends any sense of obligation to the appointing authorities and requires a dedicated adherence to the constitutional oath of office and principles of justice, which can best exist in an atmosphere of certainty in tenure of office.

I take issue with the implications in your letter that only personnel of your selection can perform in the national interest.

There are compelling and persuasive reasons why I must resist in the manner provided by law this attempt to remove me from office. Long before I took the constitutional oath of office as an official of the United States of America, I took an oath as a member of the Bar to uphold the Constitution and the laws of the United States. As such, and as a free citizen of the greatest democracy in the world, I feel it my duty as a matter of principle to prevent a violation of our country's laws. To do otherwise would be to acquiesce in the commission of an act and the creation of a precedent which could seriously impinge on the basic concept of the separation of powers on which this country was founded.

I regret, Mr. President, that I am compelled to advise you that within the limits of my capabilities, I shall continue to resist and deny the legality of your notice of removal and the appointment of new commissioners and their right to act and perform the functions set forth in the War Claims Act of 1948, as amended, and that in accordance with the orderly processes of law, will take such action as is therein provided to obtain an adjudication of the legality and propriety of your action. Meanwhile, I consider myself to be a Member of the War Claims Commission and shall hold myself in readiness to perform the duties of that office.

Thereafter, following *quo warranto* proceedings against the President's nominees in the U. S. District Court for the District of Columbia; dismissal thereof, and appeal to the U. S. Court of Appeals for the District of Columbia,[7]

[7] This appeal was by stipulation of the parties dismissed as moot since the War Claims Commission had been abolished while the appeal was pending (R. 25).

the petitioner instituted suit in the United States Court of Claims on August 20, 1954. After joinder of the issues and trial thereof, the Court of Claims dismissed the petition holding that although the petitioner was performing a quasi-legislative and quasi-judicial function, the President possessed the power to remove the petitioner without cause before the expiration of his term because in the legislation creating the office, Congress did not place any limitation upon the President's power of removal. (R. 20). Judge Whitaker dissented, maintaining the view that the President "has no power of removal of a quasi-legislative or quasi-judicial officer unless Congress confers this power on him." (R. 21).

SUMMARY OF ARGUMENT

This case, involving the scope of Presidential removal power over quasi-legislative and quasi-judicial statutory officers is in the "field of doubt" left open by the *Humphrey's Ex'r.* v. *U. S.*, 295 U.S. 602.* In that case this Court limited itself to the conclusion that "**** under the Constitution" *** illimitable power of removal is not possessed by the President in respect of officers of the character ***" named therein (id. 629). To resolve the question before the Court an analysis is required of *what power* the President does possess over officers performing such functions.

It is not necessary to inquire whether the President possesses by virtue of the Constitution or statute any authority to remove for cause, since the petitioner was not removed for cause. The issue is whether, where the Congress creates a temporary agency to perform clearly delineated and circumscribed quasi-legislative and quasi-judicial functions within a fixed period of time provides for

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" * * To the extent that, between the decision in the *Myers* case, which sustains the unrestrictable power of the President to remove purely executive officers, and our present decision that such power does not extend to an office such as that here involved, there shall remain a field of doubt, we leave such cases as may fall within it for future consideration and determination as they may arise." (295 U.S. at 632).

the selection and nomination of the members thereof by the President to serve for a determinable period of time, without enumerating causes for removal, the President has the power or authority to remove at his pleasure such officers prior to the expiration of their term and completion of their duties. Since the source of all Presidential power and authority must be found either in the Constitution or in a grant from the Congress,[9] and since neither the Constitution nor the Act *expressly* granted such authority, his right to remove the petitioner at his pleasure can only be sustained if such authority is *impliedly* granted by the Constitution or the Act.

The significance of the ruling of the court below lies in its assumption that, absent action by Congress, there exists in the office of the President a power to remove at his pleasure quasi-legislative or quasi-judicial officers from an office created by Congress,[10] and the conclusion that since Congress did not expressly enumerate causes of removal and it is unable to find in the Act or its legislative history any congressional intent to limit such presidential authority to remove, the petitioner was legally removed from office. It is the position of the petitioner that both the assumption and conclusion of the court below are erroneous and that the proper view derived from the doctrine of separation of powers is that the President does not possess under the Constitution any power to remove at his pleasure such quasi-legislative and quasi-judicial officers and that since Congress did not grant any authority to remove the petitioner, none can be inferred to exist from the absence of express words of limitation.

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[9] *Youngstown Sheet & Tube* v. *Sawyer*, 343 U.S. 579.

[10] The effect of such assumption as to Presidential power is to jeopardize the tenure of office, and independence of officers such important agencies as Securities & Exchange Commission, 15 U.S.C. 78(d); Federal Power Commission, 16 U.S.C. 792; Federal Communications Commission, 47 U.S.C. 151; the U. S. Tariff Commission, 19 U.S.C. 1330, and U. S. District Court Judges at Hawaii, and Puerto Rico, 28 U.S.C. 134(a), all of whom have been appointed for fixed terms of years with no cause for removal enumerated. But see footnote 21 regarding legislative history of Federal Power Commission.

The petitioner submits to this Court that he was an officer, performing quasi-legislative and quasi-judicial functions outside the orbit of the chief executive's duties and responsibilities; that the Constitution neither by express language, implication nor as an incident of office grants the President authority to remove such officers; that the statutory grant of authority to the President to nominate and appoint quasi-legislative or quasi-judicial officers with the advice and consent of the Senate to a temporary agency for a fixed or determinable term of office, without enumerating any causes for removal, does not carry with it by implication or as an incident thereof or inherent therein, the power to remove such officers at his pleasure.

ARGUMENT

I.

The Members of the War Claims Commission Performed Quasi-Legislative and Quasi-Judicial Functions

In the *Humphrey case (supra)*, this Court stated that the concept of power of removal discussed in *Myers* v. *U. S.*, 272 U.S. 52, was "*confined to purely executive officers*" but "*that illimitable power of removal is not possessed in respect of officers of the character just named*" and that "*as to officers of the kind here under consideration no removal can be made during the prescribed term except for one or more of the causes named in the applicable statute.*" The kind of officers the Court had in mind can best be determined by reference to its opinion. In essence the Court found, that, it is officers whose duties are quasi-legislative or quasi-judicial rather than executive, who are protected against the President's removal power. Among the examples given by the Court, in addition to the members of the Federal Trade Commission, were members of the Interstate Commerce Commission and judges of the U. S. Court of Claims. Analyzing the nature of the functions and duties

assigned to the War Claims Commission in the light of this opinion compels the conclusion that it comes within the category of agencies which this Court in the *Humphrey case* said was to be free from the coercive influence of the President's removal power.

The court below found that the "War Claims Commission was clothed with no executive powers," and that powers conferred on it "*** were wholly judicial or perhaps legislative in character. ***" (R. 16).[11] The quasi-legislative and quasi-judicial character of the functions of the War Claims Commission can best be determined by using as a frame of reference the criteria adopted by this Court to arrive at its conclusion that the Federal Trade Commission was a quasi-legislative and a quasi-judicial agency whose members enjoyed freedom of control by the President.

The Court's main inquiry in the *Humphrey case* was into the "ends which Congress sought to realize." The provisions of the Act and legislative history show that what the Congress envisaged in establishing the War Claims Commission was an independent agency[12] which would operate for about six years or less, or as the President said "as a temporary agency" (Reorganization Plan No. 1, 1954, House Document No. 381, 83rd Congress), primarily to assist the Congress in considering and disposing of a highly technical and complex set of legislative problems—as dis-

[11] The Court of Claims devoted one-third of its opinion to an exhaustive and detailed analysis of the functions and responsibilities of the War Claims Commission and concluded that the Commission "was acting in a quasi-judicial capacity; or, perhaps as an agent of Congress. * * * The powers conferred upon it * * * were wholly judicial, or, perhaps, legislative in character. * * * Other duties were also put upon the Commission * * * not of an executive but of a legislative nature. * * * There can be no doubt that in discharging this function the Commission acted as an agent of the Congress. * * * Nowhere in the Act is there cast upon the Commission the discharge of any executive function. All of its functions were of a nature either judicial or legislative" (R. 13 *et seq*).

[12] In the manner of its selection and appointment of members, fixing of a term of office and absence of grounds for removal, the Congress followed the pattern it adopted for the Philippine War Damage Commission (50 U.S.C., App. Sec. 1751, *et seq.*).

tinguished from executing the law—and performing functions "which belong primarily to Congress as an incident of its powers to pay the debts of the United States and one which it had the discretion either to exercise directly or to delegate to other agencies." (See *Williams* v. *U. S.*, 289 U.S. 553).

The War Claims Act was, therefore, the means Congress adopted to discharge three separate functions: (1) the function it had reserved to itself in Section 12 of The Trading with the Enemy Act (50 U.S.C. App. Sec. 12), of disposing of vested assets of enemy nations in such manner as it might deem expedient (*Woodson* v. *Deutsche Gold*, 292 U.S. 449); (2) adjudication of claims for compensation of U. S. citizens who were victims of enemy action; and (3) a study and survey of the nature, extent and scope of certain claims arising out of World War II.

To accomplish these purposes, the Congress, in the original Act, and as amended, established the War Claims Commission and provided for and directed (1) the *adjudication* of certain categories of claims, notably those of certain civilian American citizens interned in designated areas in the Pacific theater of operation, American military personnel taken prisoners of war, and of certain American religious institutions for certain losses sustained in the Philippines; (2) the establishment of a war claims fund; and (3) the War Claims Commission to make a general survey of the problem of war claims arising out of World War II, exclusive of those claims, considered to be of an urgent, emergency nature and already recognized by the War Claims Act.

Specifically by Sections 2 and 13 of the Act a trust fund was created in the Treasury consisting of moneys covered into the Treasury under Section 39 of The Trading with the Enemy Act (*supra*) and the War Claims Commission was authorized to dispose of these funds. By Section 2(b) of the Act, the Commission was authorized to appoint such personnel and to make such expenditures as might be

necessary for carrying out its functions. By Section 2(d) (1) the Commission and its designated employees were authorized for purposes of "any hearing, examination or investigation" *to issue subpoenas requiring persons to testify or to appear and produce documents* and under 2(d)(2) seek the aid of the United States District Court to enforce compliance with such subpoenas. Section 3 of the Act was a grant to the Commission of "*jurisdiction to receive and adjudicate according to law claims as hereinafter provided.*" Sections 5, 6 and 7 of the Act authorized the Commission to *receive and adjudicate according to law* and *provide for payment* by certificate to the Secretary of the Treasury to pay (without review by him) out of the trust fund, certain claims of civilian internees, prisoners of war and religious organizations. Section 8 of the Act required the Commission to conduct an inquiry into war claims other than those provided for in the Act and to prepare a report for the Congress of the type of claims to be considered by Congress and the methods to be employed in handling them and such other recommendations as the Commission deemed appropriate to carry out these recommendations. Section 9 of the Act required the Commission to report every six months to the Congress—*not to the President*—on the operations of the Commission. Section 11 of the Act provided that claimants should have the right to a hearing on their claims. Although an appeal procedure was provided by the Commission within its own organization pursuant to its own regulations, the Commission's decisions were to be "* * * * *final and conclusive on all questions of law and fact and not subject to review by any other official of the United States or by any court by mandamus or otherwise.* * * *"[13]

In the *Humphrey case*, the Court in examining the ends which Congress sought to realize found that the administration of the provisions of the Federal Trade Act for the prevention of "unfair methods of competition" involved

[13] Contrast this finality, with the authority vested in the Federal Security Administrator by Section 4 of the Act.

"filling in and administering the details embodied by the general standard," which Congress enacted and was not therefore an executive function. Just as the Federal Trade Commission had to fill in and administer the details of the general standard of "unfair methods of competition," the War Claims Commission was also given a set of general standards which the Congress expected it to use. For example, the administration of the civilian internee program (Section 5(a)(b)) involved the filling in of details of such standards as, *voluntary aid to or collaboration with the enemy*, and remaining *in hiding to avoid being captured or interned* by the enemy. In the prisoner of war program (Section 6(b) (d)), there were such standards as *inhumane treatment*, and *the violation by the enemy government . . . of its obligation . . . under the Geneva Convention* . . . The religious organization program (Section 7(a) and (d)) required determination of questions of *affiliation* and the ascertainment and establishment of *fair value of supplies* and of *fair and equitable postwar replacement costs*.[14]

A further index of the quasi-legislative character of the Federal Trade Commission was found in the provisions of Section 6 of that law authorizing investigation and the filing of reports and recommendations to Congress and that some of the investigations had given rise to legislation. The War Claims Commission also made investigations and reports and recommendations to the Congress which gave rise to legislation. (See page 18 *infra*.)

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[14] "When Congress enacts a statute that is complete in policy aspects and ready to be executed as law, Congress has recognized that enforcement is only an executive function and has yielded that duty to wholly executive agencies, even though determination of fact questions was necessary. Examples of the creation of such rights and obligations are patent, revenue and customs laws. Only where the law is not yet clear of policy elements and therefore not ready for mere executive enforcement is it withdrawn from the executive department and confided to independent tribunals. If the tribunal to which such discretion is delegated does nothing but promulgate as its own decision the generalities of its statutory charter, the rationale for placing it beyond executive control is gone." (Dissenting opinion of Justice Jackson, *Federal Trade Commission* v. *Ruberoid Co.*, 343 U.S. 470, 488.)

As early as 1946 hearings were held by Congress on the general subject of "Foreign War Damage Claims." (See Hearings before a Subcommittee of the Senate Judiciary Committee on S. 1322, 79th Cong. 2nd Sess., April 17, 1946). It soon became clear to the Congress that the problem of settling war claims presented many difficulties, resulting largely from the complex character of the losses and damages, the diversity of possible responsibilities, the variety of legal means available to achieve indemnification, and the legal obstacles to surmount in the process. In view of the great number and variety, as well as the aggregate amount of such claims, it appeared to be highly desirable that legislation for their payment be preceded by careful study, for aside from the problem of what claims should be paid and the equitable treatment of various types of claimants with respect to priorities, there was also involved the fundamental problem of the ultimate source and the amount of the funds to be used for their satisfaction.

In authorizing the War Claims Commission to prepare a report on this general subject, the importance of obtaining an over-all picture of war claims before attempting to provide for their settlement was recognized for the first time, after any war, by the Congress. This recognition is expressed in the language of the Interstate and Foreign Commerce Committee of the House of Representatives, in reporting HR 4044 which ultimately became The War Claims Act of 1948, wherein it stated: "*** *the question of war claims and debt claims is too complex to be approached by the Congress on a piecemeal basis* *** *the subject in its entirety must be studied thoroughly before any intelligent action can be taken by the Congress with respect to any particular aspect of war claims and debt claims.*" (Report of Interstate and Foreign Commerce Committee of the House of Representatives on HR 4044—Report No. 976, 80th Congress, 2nd Sess.). The Act was subsequently described by this Court as a "*** *measure establishing a commission on the problem of compensating American*

prisoners of war, internees and others who suffered personal injury or property damage at the hands of World War II enemies. Congressional attention was focused on the nature of these claims and methods of adjudicating them ***", *Guessefeldt* v. *McGrath*, 342 U.S. 308, 315.

This problem was viewed so seriously that HR 4044, 80th Congress, 2nd Sess., originally provided in Title II thereof for the establishment of a War Claims Commission with the *sole* function of submitting a comprehensive report to the Congress, which would present all pertinent facts and would make recommendations with respect to the adjudication and payment of these claims, it being recognized that this legislative problem was of such dimensions as to preclude its comprehensive study by congressional committees. This bill would have given the Commission approximately 8½ months to complete the report. The Senate Judiciary Committee reported favorably on HR 4044 but with an amendment in the nature of a substitute which conferred adjudicatory jurisdiction on the Commission as to the claims defined therein, but it, too, contained the provision for the report, embodied in Section 8. The substantive features of the report required by the Senate were practically identical with the provisions of Section 8 of the War Claims Act as finally enacted, with the exception that it limited the time for completion of the study to a period of two years and eight months. (Report of the Senate Judiciary Committee on HR 4044, Report No. 1742, 80th Congress, 2nd Sess.). A Conference Committee which favorably reported the amended bill, kept intact Section 8 of the Act as it appears in the final legislation, estimated that a staff of approximately 35 people, the assistance of employees of other agencies of the Government on a temporary basis, and an appropriation of approximately $275,000 would be required just to complete the report (House Conference Report, No. 2439, 80th Cong., 2nd Sess.).

Section 8 of the War Claims Act of 1948, which provides the Congressional frame of reference for the Commission's

study, called for the following information, evaluations and recommendations:

1. The estimated number of and amounts of war claims arising out of World War II, classified by types and categories;
2. The extent to which such claims have been or may be satisfied under international agreements or domestic or foreign laws;
3. The categories and types of claims, if any, which should be received and considered and the legal and equitable basis therefor;
4. The administrative methods by which such claims should be considered and any priorities or limitations which should be applicable; and
5. Any limitations which should be applied to the allowance and payment of fees in connection with such claims.

In accordance with this Congressional mandate, the War Claims Commission entered upon its study of this legislative problem and submitted two major reports to the Congress, the first of which was Report of the War Claims Commission Concerning Personal Injury and Property Claims Arising Out of World War II, of March 31, 1950 (House Document No. 580, 81st Congress, 2nd Sess.). Because of the complexity of the subject limitations of time and other factors, this report, of necessity, had to be an interim report (see introductory note to that report). On January 16, 1953 the War Claims Commission submitted to the Congress its "Supplementary" Report on War Claims. (House Document No. 67, 83rd Congress, 1st Sess.). An examination of this report demonstrates that it represents a comprehensive study, with recommendations as to legislation on all phases of the war claims problem. As a result of the recommendations of the War Claims Commission, the Congress has enacted several bills. (See Page 18, *infra*). What this Court said of the Federal

Trade Commission in the *Humphrey case* is just as applicable to this Commission: "In making investigations and reports thereon for the information of Congress * * *, in aid of the legislative power, it acts as a legislative agency."

In analyzing the Federal Trade Commission, this Court in the *Humphrey case* looked to the legislative history of the law which created it, to support its conclusion that the Federal Trade Commission was intended to "exercise its judgment without the leave or hindrance of any other official or any department of the government." In the case of the War Claims Commission, its legislative history supports the same conclusion, but it is submitted that there is no need to go beyond the unambiguous words of the Act itself, Congress having declared in Section 11 of the Act: "*The action of the Commission in allowing or denying any claim under this Act shall be final and conclusive on all questions of law and fact and not subject to review by any other official of the United States or by any court by mandamus or otherwise* ***." Compare this provision with Section 9(a) of The Trading with the Enemy Act *(supra)* which gave the Attorney General authority to receive and determine claims for the return of vested property or the proceeds thereof but authorized any dissatisfied claimant to apply to the President and to appeal to the Courts if aggrieved thereby, whereas the War Claims Commission's decisions were final, not subject to review by either the President, any other executive officer, or any judicial tribunal. What this Court said of the Federal Trade Commission should apply with equal force to this Commission: "*Its duties are performed without executive leave and, in the contemplation of the statute, must be free from executive control.*"

Another factor which this Court in the *Humphrey case* believed protected the Federal Trade Commission members against removal by the President at his pleasure was the intent of Congress as evidenced by the language of the statute "to create a body of experts who shall gain experi-

ence by length of service." It is not urged that Congress intended to prolong the War Claims Commission through the years since the Commission was created only to perform certain specified tasks in a limited period of time and was in fact abolished as of July 1, 1954 (see footnote 6, *supra*). It was nevertheless contemplated that the members of the Commission (two of the three were *required* to be members of the bar) apply to their functions the experience gained by their investigations, studies and adjudications. That conclusion must follow from the very nature of the functions assigned to it.

Under the scheme of the Act, it was to administer only a limited fund (derived from proceeds of vested property covered into the Treasury) but during the life of the Commission this fund was substantially increased. The Act setting up the War Claims Commission provided for the creation of several classes of beneficiaries, with sufficient opportunity as the circumstances arose of adding new classes. New classes were added from time to time following recommendations made to the Congress by the Commission[15]. The members of the Commission were given the assignment not only of administering the limited program of benefits provided by the Act but also of conducting a study during the period of time fixed for its existence into the nature and number of various other potential beneficiaries and the estimated amount of their claims.

The original Act called for payments to certain religious organizations in the Philippine Islands by way of remuneration for expenditures made during the war for the benefit of Americans. After several years of study and experience, Congress aided by reports and studies of the Commission amended Section 7 of the Act (Public Law 303, 82nd Cong., April 9, 1952), to provide for compensation for such religious organizations for war damage to their property and for

[15] See Public Law 303, Chap. 167, 82nd Cong., 2nd Sess.; Public Law 866, 81st Cong., 2nd Sess.

payments to these organizations of amounts sufficient to restore to pre-war capacity any hospitals in which it had an interest or to which it had contributed a staff. The determination thereof obviously required performance of judicial functions as to the extent of war damage, the amount sufficient to restore the capacity and the institutions in which an interest existed and to which it had contributed a staff. Since time was of the essence in such a program, Congress directed the Commission (Public Law 303, Chap. 167, 82nd Cong., 2nd Sess.) to commence at once to set up procedures for the payment of the newly authorized claims, even before receipt thereof, using as a basis the Commission's experience with other claims filed by various organizations under the original Act. It is not conceivable that the Congress would have expected such functions to be performed by a Commission whose members might change from day to day at the pleasure of the President.[16] Speaking of the Federal Trade Commission, the Court said: "Like the Interstate Commerce Commission, its members are called upon to exercise the trained judgment of a body of experts appointed by law and informed by experience."[17]

This Court also found that the Federal Trade Commission had a quasi judicial character, since, for example, under its statute it could be given the duties of a master in chancery in certain antitrust suits (See also *Federal Trade Commission* v. *Ruberoid, (supra).*) The War Claims Commission, it is submitted, in the types of claims over which it possessed jurisdiction, exercised a judicial

[16] Early versions of the War Claims Act, H.R. 873, 1000 & 1823, 80th Cong., 1st Session, contained language authorizing the President to fix an earlier expiration date for the Commission but this provision was eliminated from bill as finally enacted.

[17] "In some respects, the War Claims Commission compares even more closely with the Interstate Commerce Commission, than does the Federal Trade Commission. The Federal Trade Commission has nothing to resemble the rate-making power which marks the Interstate Commerce Commission as a quasi-legislative agency. The War Claims Commission on the other hand, in connection with its religious program, must make determinations of "fair and equitable post-war replacement costs."

power similar to some of the functions of the Court of Claims. It is not contended the War Claims Commission in all respects exercised the judicial power contemplated by Article III of the Constitution but rather the judicial function of a "Legislative Court." (See *Williams* v. *U. S.*, *(supra)*.) Sections 3, 5, 6 and 7 of the Act were grants to the Commission of "jurisdiction to receive and adjudicate claims according to law * * *" Sec. 2(d) authorized the use of the subpoena power and Section 11 kept its decisions free of review by any other official of the United States or by any court, by mandamus or otherwise.

In the *Humphrey case* the Court found that the Federal Trade Commission "must, from the very nature of its duties act with entire impartiality". The War Claims Commission was required to "adjudicate claims according to law", not to execute or enforce law, and like the Federal Trade Commission, it was "charged with the enforcement of no policy except the policy of law. Its duties are neither political nor executive but predominantly quasi-judicial and quasi-legislative."[18] The standards used by this Court in analyzing the Federal Trade Commission, we submit, fit the War Claims Commission. If one is quasi-legislative and quasi-judicial, so is the other. This Commission like the Federal Trade Commission "* * * *is not only wholly disconnected from the executive department but * * * was created by Congress as a means of carrying into operation legislative and judicial powers* * *" and "*to the extent that it exercises any executive function, as distinguished from executive power in the constitutional sense, it does so in the discharge and effectuation of its quasi-legislative or quasi-judicial powers* * *."

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[18] See footnote 13 *(supra)*.

II.

The President does not possess under the Constitution power to remove at his pleasure quasi-legislative or quasi-judicial officers

From the very beginning of our Government, there has been a continuing debate and dispute, Congressional and judicial, as to the existence of and the scope of President's removal power over public officers appointed by him. With rare exceptions[19], the disputes which reached this Court were concerned primarily with the power in the office of President to remove persons serving in the executive branch of the Government. Until the decision of this Court in *Myers* v. *U. S., (supra)*, no complete historical and philosophical discussion of the nature of the President's constitutional power over public officers or the background had been made by this Court; its prior decisions resting primarily on an interpretation and construction of Congressional intent and not on the fundamental constitutional question[20].

The decision in *Myers* became the basis for the concept that as to all officers "appointed" by the President, term of office and tenure was of no significance; "right to hire was the right to fire" became the answer to all questions regarding the protection of tenure, term of office or independence in office, to the degree that Congress believed no need existed to mention or provide grounds for removal in pending legislation.[21] The future of the independent agencies and officials became a source of concern to all interested in the

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[19] *Marbury* v. *Madison*, 1 Cranch 137; *Ex parte Hennen*, 13 Pet. 230; *Goodrich* v. *Guthrie* 17 How 284; *McAllister* v. *U. S.*, 141 U.S. and *Reagan* v. *U. S.*, 182 U.S. 419.

[20] *U. S.* v. *Perkins*, 116 U.S. 483; *Parsons* v. *U. S.*, 167 U.S. 324; *Keim* v. *U. S.*, 177 U.S. 290; *Burnap* v. *U. S.*, 252 U.S. 512; *Shurtleff* v. *U. S.*, 189 U.S. 311.

[21] See 72 Cong. Rec. 10332 (Debates on creation of Federal Power Commission); See also 74 Cong. Rec. 1445, 1597, et seq., (relating to removal of members of the Federal Power Commission).

maintenance of both the separation and interdependence of the three branches of Government.[22]

Resort to historical utterances and results of debates without considering all of the other circumstances results in an ambivalence of ideas and principles that leads to confusion and eventual deterioration of basic concepts. The premise that the decision of the First Congress[23], regarding the establishment of the predecessor to the present Department of State confirmed the existence of Presidential removal power, lead ultimately to the decision in *Myers* and the misunderstanding which followed it.

With the decision of this Court in *Humphrey*, a large measure of this concern and misapprehension was dissipated when it became clear that the principles enunciated in *Myers* were limited in their application to *certain* executive officers and did not and should not be religiously applied to all officers who may have been appointed by the President, and that it was the nature of the office rather than the circumstance of Presidential appointment which fixed the limits of Presidential removal power. In the light of the constitutional precepts restated by this Court in *Humphrey*, the debates in the First Congress of the United States and during the administration of Jackson and Johnson, the various decisions of this Court starting with *Marbury* v. *Madison* (*supra*) can now be placed in their proper context.

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[22] See *Selected Essays on Constitutional Law* (1938) IV, 1467; Consequences of President's Unlimited Power of Removal; *Political Science Quarterly*, XLI (Dec. 1926); The Bearing of Myers v. United States upon the Independence of Federal Administrative Tribunals—a Criticism, *American Political Review*, XXIV (Feb. 1930) 59 and Consequences of the Myers Decision, *American Law Review*, LXI (July-August, 1927) 481.

[23] The facts that the first Senate was so evenly divided that the vote of the Vice President was needed to support the view that removal power existed, *Story, Constitution of U. S.*, 5th Ed., Sec. 1542 and that the vote in the House of Representatives was 34 to 20 (The Papers of American Historical Society, Vol. 4, 491 report the vote as 29 to 22) certainly are not indicative of a clear and overwhelming view of the existence of such removal power over executive officers. Justice McLean dissenting in *Goodrich v. Guthrie*, (*supra*) speculates whether the votes would have been the same if taken at the time (1854) he wrote his dissent.

The correct view of Presidential authority appears to be that within the orbit of his constitutional and statutory duties and responsibilities the President must of *necessity*[24] have a measure of "absolute" authority over those appointed to act for him or to perform functions that "take care that the laws be faithfully executed." But even in this area, the Congress possesses and has exercised a degree of control, by giving assurances of tenure, fixing terms of office and limiting removal[25].

That this principle of necessary power was limited to executive officers was a distinction first noted in *Marbury* v. *Madison (supra)* when this Court held a Justice of Peace secure in his term of office. The doctrine of *necessity* for a power of removal over executive officers was also set forth in *Ex parte Hennen (supra)* where this Court said: "• • • the power of appointment carried with it the power of removal. • • • The reason for the principle is that those in charge of and responsible for administering functions of Government who select their *executive* subordinates *need* in meeting their responsibilities to have the power to remove those whom they appoint • • •." (emphasis added). The distinction was again noted in the dissenting opinion of Justice McLean in *Goodrich* v. *Guthrie (supra)* where he said (at p. 308 and 310): "• • • But this power of removal from office was neither exercised nor supposed to apply until recently to the judicial office." • • • It is argued that, as the President is bound to see the laws faithfully executed, the power to remove unfaithful or incompetent officers is necessary. This may be admitted to be a legitimate argu-

[24] A doctrine whose use was criticized by Chief Justice Marshall in *American Insurance Co.* v. *Canter*, 1 Pet. 511 and by this court in *Youngstown Sheet & Tube* v. *Sawyer (supra)*.

[25] In the field of foreign affairs, it adopted the Foreign Service Act of 1924 (35 Stat. 672) and Foreign Service Act of 1946, 22 U.S.C. Sec. 801, et seq., fixing grades, salaries, appointments and promotions. It provided for a Career Civil Service applicable even to lawyers serving the Attorney General (See *Roth* v. *Brownell*, 215 F. 2d 500, cert. den.; *Brownell, etc.* v. *Roth*, 348 U.S. 863) and provided preferences for veterans and imposed restrictions on their discharge and removal 5 U.S.C. 851 and even fixed limitations on discharges for loyalty. *Cole* v. *Young*, 351 U.S. 536.

ment as commonly applied to executive officers. My own view is, that the power to see that the laws are faithfully executed applied chiefly to the giving effect to the decisions of the courts when resisted by physical force. But however strongly this may refer to the political officers of the government, how can it apply to the judicial office? * * *"

It is this concept of necessity which forms the basis of the implied power to remove, but can it be said that there exists or ever existed a similar need over the judicial or legislative branches of the Government. This Court in *Humphrey* said, citing *Story on Constitution of U. S. (supra)*, "that neither of the departments in reference to each other ought to possess, directly or indirectly an overruling influence in the administration of their respective powers." Justice Story continued to say in his monumental work (Sec. 531) that: "* * * in order to preserve in full vigor the constitutional barrier between each department when they are entirely separated, it is obviously indispensable that each should possess equally and in the same degree, the means of self-protection."

It is recognized that the general rule precludes the use of congressional debates to explain the meaning of words of the statute; they may however be considered as reflecting upon its general purposes, *Humphrey's Ex'r. v. U. S. (supra)*. The debates in the House of Representatives indicate clearly the type of agency it was attempting to create. In the early days of the Second Session of the 80th Congress, which enacted the War Claims Act, there was great insistence that immediate relief be given to victims of the war. Congressman Wolverton addressing the House, sitting as a committee of the whole, discussed the recommendations of the Committee on Interstate and Foreign Commerce, as follows:

> "It can be readily seen from this brief description * * * that there is no intention to determine by the legislation now before us any general or specific policy with respect to the character of claims to be recognized or priorities as between different categories or types of claims or the

> basis on which the amount of compensation is to be determined. * * * The only intelligent and common sense way in the opinion of the committee is to provide for a commission to make the necessary and detailed study and examination of facts and principles that is necessary if justice and equity are to prevail." (94 Cong. Rec., P. 553, et seq.).

Congressman Gearhart, one of those pressing for immediate payment of claims by giving jurisdiction to the District Courts, used the following significant language: "* * * is it necessary for us to create another commission * * * to perform a congressional function when there is already available * * * the Federal judiciary * * *." (94 Cong. Rec. p. 564) Does this indicate the intent to create an agency which falls within the sphere of executive influence? Is this the type of officer over whom the members of the constitutional convention and the First Congress believed the President possessed the power of removal[26] as an incident of appointment? It is submitted to this Court that it was never intended that the Constitution should create in the President removal power over such officers.

That the power to legislate includes the incidental power to make investigations in aid of legislation is a general principle no longer questioned. It is obvious that the nature of such investigations would be limited and lose the benefit of objectivity if the officers making it are subject to executive control by virtue of the removal power. "* * * one who holds his office only during the pleasure of another cannot be depended upon to maintain an attitude of independence against the latter's will." *Humphrey's Ex'r.* v. *U. S. (supra)*:

The concept of "necessity" as supporting the existence of a power of removal over purely executive employees is similarly the basis for denying its existence over officers per-

[26] Justice Story in his work on the Constitution (Sec. 541) questions whether it was ever contemplated that the removal power existed before the Constitution was finally adopted. See also No. 77, The Federalist which seems to say that removal existed only with the concurrence of the Senate.

forming quasi-legislative and quasi-legislative functions. "The separation of powers found in the Constitution is not merely a matter of convenience or governmental mechanism. Its object is basic and vital; namely, to preclude a commingling of these essentially different powers of government in the same hands," *O'Donoghue* v. *U. S.*, 289 U.S. 516. The duties and responsibilities of the executive branch do not encompass investigations and inquiries which form the basis of legislation for the payment of the debts, expenditure of public monies or who shall be the recipients of benefits for suffering at the hands of the enemy. The President may recommend, may urge, may even "demand", the enactment of legislation, prompted by what he believes to be the will of the people, their best interests, or the promises or commitments of his administration, but the ultimate decision and the establishment of the policy rests with the Congress. To fulfill its obligations, it must be assured that officers, whose selection the Congress may have vested in the President subject to confirmation by the Senate, will after appointment perform their quasi-legislative or quasi-judicial functions in accordance with and in the manner prescribed by the congressional mandate.

Many have seen our Government grow from a small number of executive departments to a complex of Boards, Bureaus, Commissions, Agencies, Corporations, "Administrative Tribunals" and departments, headed by Cabinet Officers, Administrators, Commissioners, Directors, Board members and Chairmen. Some have been placed and created within or under the aegis of designated departments; others under the Office of the President and still others as Independent Agencies. These instruments of Government tell us what foods are fit for human consumption, what drugs can be offered to cure our physical and mental ailments, what we are entitled to receive for the loss of limb, earning capacity and life itself. They direct how employer and employee may conduct their affairs with one another, they tell us how to mine our coal, how, and where to distribute oil, gas and electric energy, how, who, where and when we

may use the airways for the dissemination of news, information and entertainment, they limit the rates that may be charged for the transport of goods and persons on land, on sea and in the air, they limit, control and authorize the use of atomic and nuclear energy, the use of our farm lands, navigable rivers and waters, they influence the rates of interest, affect the supply of money and the scope of credit, they tell us how we may advertise our wares, and how we may sell and market interests or participation in our business or industry. Yet each is a creature of the Congress and created to perform its task according to standards laid down for it.[27] When the law creating each is complete in all policy aspects, it is recognized as an executive function and properly assigned to the executive branch, but where the policy is not complete or there is required the filling in or administering of details of a legislative standard, the delegation has been to are independent quasi-legislative or quasi-judicial office.[28]

The "blending" of other functions into the executive branch was recently criticized (*Reid* v. *Covert*, 77 S. Ct. 1222, 1242) (June 10, 1957) and the delegation of such functions to the executive branch has been consistently struck down by this Court. In *Schecter Poultry Corporation* v. *U. S.*, 295 U.S. 495, 529, this Court said:

> (2) Second. *The Question of the Delegation of Legislative Power.*—We recently had occasion to review the pertinent decisions and the general principles which govern the determination of this question. Panama Refining Company v. Ryan, 293 U.S. 388, 55 S. Ct. 241, 79 L. Ed. 446. The Constitution provides that "All legislative powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives." Article 1, § 1. And the Congress is authorized "To make all Laws which

[27] The influence, dignity and importance of the action by these agencies increase as the years go by. Only recently this court had occasion to refer an issue of fact to such a body rather than a "court of law". (See *U. S.* v. *The Western Pacific R. R. Co.*, 77 S. Ct. 161).

[28] See footnote 14, (supra).

shall be necessary and proper for carrying into Execution" its general powers. Article 1, § 8, par. 18. The Congress is not permitted to abdicate or to transfer to others the essential legislative functions with which it is thus vested. We have repeatedly recognized the necessity of adapting legislation to complex conditions involving a host of details with which the national Legislature cannot deal directly. We pointed out in the Panama Refining Company Case that the Constitution has never been regarded as denying to Congress the necessary resources of flexibility and practicality, which will enable it to perform its function in laying down policies and establishing standards, while leaving to selected instrumentalities the making of subordinate rules within prescribed limits and the determination of facts to which the policy as declared by the Legislature is to apply. But we said that the constant recognition of the necessity and validity of such provisions, and the wide range of administrative authority which has been developed by means of them, cannot be allowed to obscure the limitations of the authority to delegate, if our constitutional system is to be maintained. Id. 293 U.S. 388, page 421, 55 S. Ct. 241, 79 L. Ed. 446."

If, therefore, the officers of such instrumentalities as the War Claims Commission (by virtue of the circumstance that Congress vested their *selection* in the President and mindful of the importance of the functions, required the consent and advice of the Senate,) become subject to the domination and control of the President, through his power of removal (unless Congress expressly denies him such power), there ceases to exist "in full vigor the constitutional barrier between each department" of which Justice Story speaks in his treatise (supra) and we have the commingling which so concerned this Court in *O'Donoghue v. U. S., (supra)*.

The answer suggests itself: the President in the field of legislative and judicial concern has no removal power except as may be validly delegated to him by Congress; that by virtue of the congressional vesting of the power of *selection* in the President, subject to Senate confirmation, there does not accrue to him impliedly or as an incident thereof, the

power of removal. Upon selection, confirmation and appointment, the executive's function as to such officers are completed.[20]

To hold otherwise would be to sanction an unfortunate anomaly. When Congress vests the power of appointment in the heads of departments we have the situation stated by this Court in *U. S.* v. *Perkins, (supra)*:

> "* * * Congress has by express enactment vested the appointment of cadet engineers in the secretary of the navy, and when thus appointed they become officers and not employees * * *. It is further urged that this restriction of the power of removal is an infringement upon the constitutional prerogative of the executive, and so of no force, but absolutely void. Whether or not Congress can restrict the power of removal incident to the power of appointment of those officers who are appointed by the President by and with the advice and consent of the Senate, under the authority of the Constitution (article 2, § 2,) does not arise in this case, and need not be considered. We have no doubt that when Congress, by law, vests the appointment of inferior officers in the heads of departments, it may limit and restrict the power of removal as it deems best for the public interest. The constitutional authority in Congress to thus vest the appointment implies authority to limit, restrict, and regulate the removal by such laws as Congress may enact in relation to the officers so appointed. The head of a department had no constitutional prerogative of appointment to offices independently of the legislation of Congress, and by such legis-

[20] This Court in *Humphrey* said the *Myers case* sustains "* * * the unrestrictable power of the President to remove purely executive officers * * *." This power must exist because the Constitution "requires" that the President have the power to remove officers appointed by him to perform duties which are his legitimate concern. The President's power to remove thus found in the Constitution stems not from the act of appointment but rather the necessity to control those who act for him in fulfilling his constitutional obligations. All other authority to remove can only arise by virtue of a valid congressional vesting of such power and authority, and the source of authority must therefore be the statute itself. If the statute *grants* authority to appoint, the power to remove must be found somewhere in the statute itself and not in the power to appoint. Only in this way can the doctrines of separation of powers and checks and balances have real vigor and meaning.

> lation he must be governed, not only in making appointments, but in all that is incident thereto."

when however Congress, because of the dignity and importance of the office seeks not only selection by the President, but the advice and consent of the Senate, is the officer thus appointed to be less secure, less independent, and more subservient to the domination and control of the President than an "inferior officer" whose appointment is vested in the courts of law or the head of a department (who holds his own office by virtue of presidential appointment)?

III.

Congress Validly Curtailed and Restricted the Removal of Petitioner

On the premise that the War Claims Commission is a quasi-legislative and quasi-judicial agency and that as to such agencies Congress possesses, as an appropriate incident of its authority, the power to limit, condition, restrict or curtail whatever power of removal the President may possess, an examination of the War Claims Act in the frame of reference established by the *Humphrey case*, makes it clear that the Congress did not intend the President to have the authority to remove the petitioner *at his pleasure*. The Act made no grant of power to the President other than selection and appointment of members, after Senate confirmation; it fixed the expiration of the petitioner's term and failed to specify, authorize or enumerate any causes for removal. The purposes for which the Commission was created, the character of its organization and functions and the conduct of Congress are clear indices of the intent of Congress to preserve the doctrine of separability and keep its members free from removal at the pleasure of the President.

Congress was legislating against a historical background which gives meaning to the absence of an express grant of power to remove or enumeration of causes for removal. It must be presumed that it was aware of the rulings of this

Court in *Humphrey* and *Myers* and even the decision of the Court of Appeals for the 6th Circuit in *Morgan v. TVA*, 115 F. 2d 990. Congress recognized that a quasi-judicial and quasi-legislative officer required to "adjudicate according to law" and to act as an aid of the legislative branch "should be free from the remotest influence, direct or indirect" of the other departments and that "one who holds his office only during the pleasure of another cannot be depended upon to maintain an attitude of independency against the latter's will." It knew that this Court in the *Humphrey case* had found that even "* * * *the fixing of a term subject to removal for cause unless there be some countervailing provision or circumstance indicating the contrary* * * * *is enough to establish the legislative intent that the term is not to be curtailed in the absence of such cause.*

It is not urged that by merely providing a term of office, Congress intended to limit the power to remove an officer who would otherwise be subject to such power. If the office is *purely executive* the President's removal power (the *Myers case* holds), cannot be limited. Where, however, there is no question that the office is quasi-legislative or judicial, as distinguished from executive, the fixing of a term is also evidence of the intent of Congress to create an agency outside the orbit of the executive's power of removal. The members of the War Claims Commission serve for the term fixed by the Act. Section 2(a) thereof stated that the "*terms of office*" of the members of the Commission "*shall expire at the time fixed in Subsection (d) for the winding up of the affairs of the Commission.*" The Act provided that the Commission shall wind up its affairs at the earliest practicable time after the expiration of the time for filing claims but not later than three years after the expiration of such time. The "bar date" originally fixed for filing of claims was March 31, 1951. It was extended for one year by Public Law 16, 82nd Congress, thus requiring completion of the Commission's work by March 31, 1955. Public Law 303 of the 82nd Congress extended the "bar date" for

another year but again mindful of its intention to create a "temporary agency," the Act included a provision against an extension of the life of the Commission beyond March 31, 1955. That then was the date the term of the members "shall expire", except for the sole contingency that the work of the Commission might be wound up sooner. It is the creation of a term rather than the particular words and formula to be used in determining it which is significant. The provision for termination on the happening of an event evidences an intent of Congress that the term shall not be curtailed except upon the happening of that event, i.e., winding up of the affairs of the Commission.[30]

It may be argued that under the rules of statutory construction used by this Court to determine the existence of congressional intent to restrict removal, that the absence from the Act of language specifying a term measured in units of time and the lack of any mention of grounds for removal should be treated as an admission that the members of the War Claims Commission were not free from removal. Such omission of a specific prohibition against removal should not be construed as an admission that the President had the power because Congress knew he had only such powers in the case of quasi-legislative and quasi-judicial agencies as Congress gave to him. The only construction which can be placed on the absence of an enumeration of one or more specific causes of removal in the instant Act is an intent that none shall be available to the appointing authority.

This Court has said that when a statute creates an office *without* a specified term, authorizes appointment and says nothing of removal, that the President may remove at his pleasure.[31] But this rule was developed to ascertain term and tenure of "executive" officers and like the rule of con-

[30] If the term of the Federal Commissioner in the *Humphrey case* was geared to the completion of a task with the further provision that it not run beyond a specific date as was the term of the petitioner, it probably would not have changed this Court's view.

[31] *Myers* v. *U. S.* (supra), p. 187.

struction followed in *Shurtleff* v. *U. S., (supra)* should not be used to determine whether Congress intended to restrict or grant the power of removal over a quasi-legislative or quasi-judicial officer. This, we suggest, is implict in the Court's ruling in *Humphrey*. When the Act was passed, Congress was dealing not with an executive agency and we should not treat the petitioner's term as were the terms of office discussed in *Parsons* v. *U. S.* *(supra)* or in the *Myers case (supra)* which concerned purely executive officials and functions.

Nor can it be said the Congress fixed an expiration date for the term of the petitioner only for the purpose of avoiding life tenure as in the *Shurtleff* case, for in the case of the War Claims Commission tenure for more than six years was impossible since the Commission's existence was limited to that same term.[32] In the case of the War Claims Commission, the term of office would automatically come to an end with the winding up of the affairs of the Commission, so that specification of a term in days, months or years was unnecessary. If the language of the Act that the term of the petitioner *shall* expire with the winding up of the affairs of the Commission does not mean he is to serve without interference of the President until the affairs have been wound up, then it has no meaning at all.

In *Morgan* v. *TVA, (supra)* the sixth circuit has before it the question of scope of Presidential removal power and the intent of Congress to curtail it. That court found considerable evidence of congressional intent not to limit the President from the fact that a branch of Congress acted favorably on the nomination of a successor to the vacancy created by the disputed removal. In the instant case it should be noted that just the reverse occurred. When the President submitted to the Senate on February 23, 1954 the nomination of a successor to the petitioner, the Senate (controlled by members of the same political persuasion as the Presi-

[32] In fact the Commission was abolished prior to the expiration date. See footnote 6, *supra*.

dent) failed to take any action by the time the Commission was abolished. (R. 24).

In *Humphrey*, this Court said: "* * * *if the intention of Congress that no removal should be made during the specified term except for one or more of the enumerated causes were not clear upon the face of the statute, as we think it is, it would be made clear by a consideration of the character of the commission and the legislative history which accompanied and preceded the passage of the act.*" The records of congressional proceedings reveal that in the early stages of the legislation, Congress gave the President authority to curtail the life of the Commission (not the term of office of the members)[33]. When it realized the full scope of the duties, obligations and responsibilities granted to the Commission, it fixed a definite time for the completion of the program and eliminated all reference to Presidential authority to terminate the Commission's work. There is the presumption that Congress, by eliminating a provision contained in an earlier draft of legislation from the final version, intended to exclude such grant or subject matter. *Penna. R. R. Co.* v. *International Coal Co.*, 230 U.S. 184, 198.

In the case of the War Claims Commission, the Congress appreciated that the character of the duties and functions it had delegated to that agency were quasi-legislative and quasi-judicial fixed a time when the term shall expire and did not expressly grant to the President the power to remove at either his pleasure or for the reason stated in his letter of December 10, 1953. In the *Humphrey case* the Court reasoned that since the President had no illimitable power of removal in the case of officers performing quasi-legislative or quasi-judicial functions, they could be dismissed by the President *only* for the causes set forth in the law and that there was implicit for such agencies a prohibition against dismissal for any other causes. If there-

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[33] House Report No. 976, 80th Cong. 1st sess., House Report 1742, 80th Cong. 2nd sess., H.R. 873, 1000, 1823 80th Cong. 1st sess., H.R. 4044, 80th Cong. 2nd sess.

fore the intent of Congress to prohibit removal for causes other than those provided in the statute was inferred by the Court not only from the language of that law, but also by analysis of the character of its function, the same inference can properly be made for the War Claims Commission. Its act provided *no* cause for removal and its functions were quasi-legislative and quasi-judicial. It certainly should not be concluded that an act which does not enumerate any causes for removal gives the President wider latitude (and authority to remove at his pleasure) than he has under an act which lists specific causes.

To hold that the members of the War Claims Commission served at the will and pleasure of the President would "be to thwart in a large measure the very ends which Congress sought to realize by definitely fixing the expiration of the term of office"; would render meaningless the detailed language used by Congress regarding the expiration of the term and life of the Commission and its insistence that the work be completed "at the earliest practicable time after the expiration of the time for filing," do violence to the Congressional interest and concern implicit in the creation of independent commissions, i.e., "to have * * * a body of experts who shall gain experience by length of service; * * * which shall be independent of executive control except in its *selection* and free to exercise its judgment without the leave or hindrance of any other official or any department of government" and which affords to the Congress the aid and assistance it desired in the performance of its traditional functions. The conclusion that the Act provided a fixed term not subject to curtailment by the President, we think, is inescapable from an analysis of the language of the Act, the character of the Commission and its functions as drawn from the statute as a whole, its comparison to the Federal Trade Commission, Interstate Commerce Commission and similar agencies and the conduct of Congress in writing the Act and dealing with the President's nominees to succeed the petitioner on the War Claims Commission.

CONCLUSION

For the reasons stated, it is respectfully submitted that the judgment of the court below should be reversed.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 52

MYRON WIENER, *Petitioner,*

v.

UNITED STATES OF AMERICA

On Writ of Certiorari to the United States Court of Claims

REPLY BRIEF FOR THE PETITIONER

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1957

No. 52

MYRON WIENER, *Petitioner*,

v.

UNITED STATES OF AMERICA

On Writ of Certiorari to the United States Court of Claims

REPLY BRIEF FOR THE PETITIONER

Summary of Reply

The respondent after the ingenuous approach it took in its brief in opposition to the petition for writ of certiorai now submits an 87-page brief (with 152 footnotes and a 201-page statutory appendix) containing many equivocal and incomplete facts*, speculations and misconceptions of principles of law to support the respondent's views of the issues herein. The pleas that prior decisions of this Court and others have determined the issues involved

* e.g. The suggestion (Resp. Br., 7) that "enemy assets" were vested *in* the Alien Property Custodian whereas the assets were vested *by* him and covered into the Treasury (see fn 25, infra). The efforts to suggest (Resp. Br., 50) that religious claims constituted only 2% of all claims, whereas in fact, such claims were the most complex and represented claimed amounts totaling approximately $128,862,161.28 out of total claims of $302,978,287.33 (9th Semi-annual Report, War Claims Commission). The suggestion (Resp. Br., 80, fn 146) that the bulk of the Commission's adjudications were handled by civil service trial examiners whereas neither record nor anything else establishes that the Commission used such examiners or was subject to the Administrative Procedures Act.

herein; that the War Claims Commission's functions were purely executive; that the postulate of executive unity requires the President to possess the power to remove quasi-legislative and quasi-judicial officers unless clearly limited by Congress, are primarily permutations on the old theme[1] that the President possesses as an incident of his office and his express constitutional powers such other inherent, implied and incidental powers as may be necessary to assure the orderly functioning of Government.

The weakness of the respondent's underlying argument is its failure to recognize that the doctrine of separation of powers and the corresponding system of checks and balances were not primarily designed to assure a smoothly functioning and efficient national Government but rather a republican form of government in which no one of these branches would have complete domination of the powers of the other. This fallacy results from respondent's misconception of historical events and the fundamental import of decisions of this Court and its failure to equate the functions and duties Congress delegated to the War Claims Commission in the proper frame of reference. Before demonstrating the foregoing, the petitioner deems it necessary first to reply to the untimely and belated suggestion that *res judicata* and collateral estoppel is applicable to the instant case.

I.

Res Judicata and Collateral Estoppel

The respondent, at this late stage of the proceedings, asks the Court to avoid review of the fundamental constitutional questions involved herein by passing on a collateral question, the determination of which could seriously affect the scope and extent of the jurisdiction of the U. S. Court of Claims in wage and pay cases and the District Courts

[1] Today the theme is entitled, "Foreign Relations power"; a few years ago, it was called "Security" and prior thereto "National Defense" and "General Welfare."

in review and consideration of disputes alleging illegal and improper discharge and removal from office. This request of the respondent should be denied since the issue is without merit and improperly made.

The respondent admitting that "the former judgment *does not operate as a complete bar* to * * * these proceedings [emphasis added] nevertheless urges the application of res judicata and collateral estoppel.[2] If the respondent truly believed that such principles were applicable to the facts in this case (all of which facts were mentioned in the petition for writ of certiorari), it owed a duty to this Court and it was incumbent upon it to have raised and argued the question at the time the petition for writ of certiorari was pending in this Court and to have similarly fully argued the issues in the court below. The rules of this Court require a respondent "* * * to file * * * an opposing brief disclosing *any matter or ground* why the cause should not be reviewed by this court." * * *[3] This the respondent failed to do and now after the granting of the writ of certiorari, the printing of the record, filing of the petitioner's brief and scheduling of the case for argument,[4] attempts in a vague and qualified manner to argue res judicata when even in the court below it "conceded" that prior decisions of that court made it clear that res judicata was not applicable to the instant case.[5]

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[2] Resp. Br., 69.

[3] Supreme Court Rules, 19.

[4] Respondent's time to file its brief expired on September 27, 1957, but its time to file was extended, to October 15, 1957.

[5] In its brief in the Court of Claims (Fn 1, p. 4), respondent stated in part as follows: "In view of this Court's rulings in *Levy* v. *United States* 118 C. Cls. 106 and *O'Brien* v. *United States*, 124 C. Cls. 655, argument has been omitted on defendant's plea of *res judicata*. Concededly, with respect to plaintiff's first action in the nature of *quo warranto* and this suit, the remedy sought and the named parties are different in the technical legal sense. But these distinctions merely reflect the fact that the extraordinary legal remedy invoked in the first action carried with it the remnants of common law technical forms." * * *

This Court has found that a suit against an officer of the United States is not necessarily a suit against the President or the United States,[6] and the United States Court of Claims has consistently held that suits against individual officers of the United States for illegal removal and for restoration to office, are within the exclusive jurisdiction of the United States District Courts and that suits for salary are within the exclusive jurisdiction of the United States Court of Claims and since such suits in the District Court are not against the United States, a judgment obtained in such district court determining the validity of a removal is not res judicata to an action for salary in the United States Court of Claims.[7] The Department of Justice took precisely this position and successfully argued before the Court of Claims that notwithstanding a decision of the United States District Court in favor of a discharged Government employee against the head of the department, the United States could in the suit in the Court of Claims by the *same* employee relitigate the propriety of such discharge since the United States was not a party to the District Court action, which in any event did not possess jurisdiction over the cause of action pending in the Court of Claims.[8]

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[6] *Youngstown Sheet and Tube Corp.* v. *Sawyer*, 343 U. S. 579.

[7] *Levy* v. *United States*, 118 C. Cls. 106; *O'Brien* v. *United States*, 124 C. Cls. 655; *Casman* v. *United States*, 135 C. Cls. 647.

[8] In *O'Brien* v. *United States*, (supra) the Government in its brief (p. 67) argued "The order of the District Court restoring plaintiff to employment in the Navy Department is not res judicata of his right in this Court to recover back pay . . . plaintiff instituted a civil action in United States District Court, entitled *Edward J. O'Brien*, plaintiff v. *Francis P. Matthews*, Secretary of the Navy, defendant, asking restoration of the plaintiff to employment by the Navy.

From the above, it can be seen that as between the District Court action and the present one, obviously not only the parties are different but also the relief sought is different**. Under the precedents noted in the quotation from the *Levy* case, *supra*, therefore, the District Court order is not determinative of the plaintiff's right to recover herein, but this Court may examine for itself in this suit for back pay amounting to over $33,000 the question of the validity of plaintiff's removal in 1945**."

The principle of res judicata is that "* * * a right, question or fact distinctly put in issue and directly determined by a court of competent jurisdiction * * * cannot be disputed in a subsequent suit *between the same parties or their privies;* and even if the second suit is for a different cause of action, the right question or fact once so determined must as *between the same parties* be taken as conclusive * * *."[*] The facts and circumstances of this case clearly demonstrate that it does not have *all* of the factors necessary to have res judicata apply.

When the nature of the quo warranto proceedings had in United States District Court and the events which occurred in the United States Court of Appeals for the District of Columbia are examined in the light of the basic concepts of res judicata, it becomes clear that there does not exist any basis for respondent's contentions. Title 16, Chapter XVI, District of Columbia Code, authorizes a *quo warranto* proceeding to be instituted by and in the name of the United States upon the relation of a third person (id. Sec. 1601-1602). The request that such suit be instituted in the name of the United States *must* first be made to the Attorney General of the United States and the United States Attorney for the District of Columbia. Upon their refusal to do so, an *interested person* with leave of the District Court may bring the action in the name of the United States (id. Sec. 1603). If we go beyond the clear language of this statute to the common law principles of quo warranto, which the statute leaves in effect, *United States ex rel. Noel* v. *Carmody*, 148 F. 2d 684, the conclusion is inescapable that whatever the role of the United States may have been in the suit, is not that of a defendant.

When the Attorney General and United States Attorney refuse to bring the action, they cannot be compelled to do so but if the relator obtains leave of the District Court,

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[*] *United States* v. *Munsingwear*, 340 U. S. 36.

such law officers cannot prevent the relator from making the United States a party plaintiff, *Respublica* v. *Griffiths*, 2 Dall 112, 1 L. Ed. 311 (1790). It may be only a nominal plaintiff but it is certainly not the party defendant, nor did the proceedings involve a suit against the President. *Newman* v. *United States ex rel. Frizzell*, 238 U. S. 537, or against the three defendant respondents as officials of the United States, *State ex rel. Holloman* v. *Leib*, 125 P. 601, *Rhodes* v. *Love*, 69 S. E. 436. The District Court suit was against the three presidential appointees personally, the writ of quo warranto was directed against them as individuals and the judgment of the District Court would have bound only them and not their successors in office. 44 Am. Jur. 102, 103. Except for establishing the "interest" of the relator, the primary issue was not *his* right to the office but rather that of the incumbents. *People ex rel. Dick* v. *Mosco*, 167 P. 2d 949.

We do not have the situation presented in *Sunshine Anthracite Coal Co.* v. *Adkins*, 310 U. S. 381. There the parties to the second action were the coal company and the National Bituminous Coal Commission and in the first suit the same coal company and Homer Adkins, *Collector of Internal Revenue for the District of Arkansas*. This Court accordingly found that both the Collector and Commission were representatives of the United States and that "* * * there is privity between officers of the same government so that a judgment in a suit between same party and a representative of the United States is res judicata * * *" (id. 402). The circumstance that in the quo warranto proceedings the Department of Justice chose to appear for the three defendants[5] did not, however, make such individuals the representatives of the United States. Certainly none

[5] 5 U.S.C. 306 provides that "The officers of the Department of Justice * * * shall * * * render all services * * * to enable the President * * * and other officers * * * to discharge their respective duties; and shall on behalf of the United States * * * prosecute and defend all suits and proceedings * * * in which the United States or any officer thereof *as such* officer is a party or may be interested * * *."

of the three defendants could not have interposed against the petitioner in the District Court either the counterclaim on which the United States obtained a judgment in the Court of Claims or any other offset or claim the United States might have against the petitioner. The distinction made and principles enunciated by this Court in *Sage* v. *United States*, 250 U. S. 33, apply with equal validity to this case and are the principles on which the Court of Claims and the Department of Justice relied in *O'Brien* v. *United States*, *supra*. The District Court proceedings, therefore, did not nor could it decide rights, questions or facts between the *same* parties as were involved in the court below and res judicata or collateral estoppel is not applicable.

Upon dismissal of the writ of *quo warranto* by the District Court, an appeal[11] was taken by the "plaintiff" therein to the United States Court of Appeals for the District of Columbia. When the issues involved in the appeal became moot because of the abolition of the War Claims Commission, the parties by their respective counsel agreed as appears below[12] to a dismissal of the appeal. Pursuant to

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[11] See Rule 81(a)(2) Federal Rules of Civil Procedure.

[12] AGREEMENT OF DISMISSAL

It is hereby agreed between the parties hereto, inasmuch as the War Claims Commission has been abolished by Reorganization Plan No. 1 of 1954 (19 Fed. Reg. 3985) and this action has become moot, that the above entitled cause be dismissed under Rule 21, and the Clerk is hereby directed to enter the case dismissed, without costs to either party, and that he transmit a certified copy of this agreement to the Clerk of the United States District Court for the District of Columbia.

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Attorney, Department of Justice
Attorney for Appellees

I, JOSEPH W. STEWART, Clerk of the United States Court of Appeals for the District of Columbia Circuit, do certify that the foregoing is a true copy of the original agreement filed August 10, 1954 in the therein entitled cause as the same remains upon the records and files of the said United States Court of Appeals, and that the said case was on August 10, 1954, entered dismissed under Rule 21 in accordance with said agreement.

the Appellate Court's rule, the clerk transmitted a copy of the said agreement to the Clerk of the United States District Court. Implicit in such agreement is the recognition by both parties that the rights and facts in issue in that suit were no longer capable of final determination or conclusiveness (See Restatement, Judgments, Sec. 69(2)). Now the respondent urges that the principles enunciated in *United States* v. *Munsingwear, supra,* are applicable to the instant case.

The facts in *Munsingwear* are so different as to make that case not only distinguishable but inapposite. In *Munsingwear,* the parties in each step of the litigation were the same[13] and were the only ones who could be bound by the decision of the lower and appellate court whereas here none of the parties are the same, except that petitioner acting in a representative capacity for the benefit of the community (*Brown* v. *Truax,* 115 P. 597) was the relator in the District Court. In *Munsingwear,* the District Court had jurisdiction to give full relief to the "Government" for the alleged violation of a regulation (either by way of treble damages or injunctive relief or both) whereas in the quo warranto proceedings, all that the Court could do was find that the President's appointees were usurpers (Title 16, Sec. 1608, D. C. Code), it could not restore the petitioner to his office nor render a judgment for his lost salary.

In *Munsingwear* the appeal was dismissed by order and judgment of the Court upon motion of the respondent; however, in the instant case, the appeal was dismissed by *agreement* of the parties filed with the Clerk of the Court of Appeals and the District Court. To apply the principles enunciated in *Munsingwear* to the totally different facts and circumstances herein is, therefore, unwarranted and would afford to the respondent an opportunity to have the Court pass on a question which could substantially affect the

[13] Except that the successor in office to the original plaintiff was substituted as the party plaintiff.

jurisdiction of the Court of Claims and its established practice and procedure and the practice in the United States District Court to determine employee's rights to office in illegal discharge or removal cases. Such an important question should not be considered on the basis of the posture of this case and the limited discussion contained in this reply or respondent's brief.

II.

The Nature of the President's Power of Removal

The petitioner does not dispute the premise that as to "purely executive officers" the President has been held to posses the unrestrictable power of removal[14]; it does, however, submit that the petitioner is not such a "purely executive officer" but rather an "officer of the United States" performing quasi-legislative and quasi-judicial functions, over whom the President possesses only such degree of concern and control as the Congress may validly grant to him. The respondent would have us believe that there exists in the President the implied unlimited power of removal of "all officers of the United States" appointed by him subject only to constitutional or statutory restrictions with respect to non-executive officers.

Assuming that we understand the meaning and scope of "non-executive officers", the fact is that the Constitution does not contain *any express provisions* restricting the removal of *such non-executive officers* nor does the War Claims Act contain any express provision restricting removal other than the fixing of a term of office and the absence of grounds for removal. But neither does the Constitution nor the statute involved contain any express grant of power to the President to remove either executive or non-executive officers of the United States appointed by

[14] *Humphrey's Ex'r* v. *United States*, 295 U. S. 602, 632.

him. The issue thus remains; how did the President acquire the power to remove "non-executive officers?"

The respondent relies heavily on *some* of the utterances of James Madison; the results of the debate in the First Congress and decisions of this Court to support its premise that the existence of removal power over such *non-executive officers* must be implied from the recognition of the existence of implied unrestrictable power of removal of *purely executive officers* appointed by the President. The authorities do not afford support for this premise of the respondent. Mr. Madison and the members of the First Congress were considering only "high political officers" and the extent to which the Senate could participate in decisions relating to the removal by the President of officers performing duties affecting the performance of the President's constitutional powers. Even before the adoption of the Constitution, Mr. Madison recognized[15] that the "government" is administered by different persons, some * * * holding their offices during pleasure, for a limited period or during good behavior * * *" and that "* * * the tenure of the ministerial offices generally will be a subject of legal regulation conformably to the reasons of the case and the example of the State Consitutions."[16] During the First Congress, Mr. Madison also recognized that there were different kinds of "officers of the United States" when he argued that the Office of Comptroller of the Treasury could not be considered in the same category as the Secretary of State since the Comptroller's office did "partake of a Judiciary quality" warranting a term of office for a fixed period of time.[17]

There can also be no question that Mr. Madison knew that the theory of implied power of removal applied to a

[15] The Federalist, No. 39.

[16] See *Myers* v. *United States*, 272 U. S. 52, 244 dissenting opinion Mr. Justice Brandeis, for an analysis of the provisions of the various State Constitutions in effect at the time Constitution was adopted.

[17] 1 Ann. Cong. 611-614.

limited group of officers after the 1803 decision of this Court in *Marbury* v. *Madison*, 1 Cranch 137. Justice Story and Justice McClean recognized it, and the debates during the Johnson impeachment proceedings were predicated on the limited area to which the doctrine of implied removal power applied. Any thoughts that the concepts and principles enunciated by the First Congress and early decisions of this Court extended the implied power of removal to "non-executive" officers were substantially removed by this Court's decision in *Humphrey's Ex'r.* v. *United States*, *supra*. It is, therefore, sheer sophistry to now argue that history and the decisions of this Court support the view that there is applicable to the instant case, a canon of construction (that the power to appoint carries with it the power to remove); that the Presidential duty to take care that the laws be faithfully executed and a "postulate of executive unity" requires the "presumption" that the President possesses removal power over non-executive officers unless limited by Congress.

The spelling out of an implied power must ordinarily find its justification in the necessity to possess it for the fulfillment or execution of an express power, duty or obligation. What express power, duty or obligation the President possessed with regard to the War Claims Commission, other than the authority to select and nominate has not been demonstrated nor established by the respondent. If the functions and duties of the petitioner were "non-executive" or quasi-legislative and quasi-judicial (or to quote Mr. Madison, "partake of a Judiciary quality"), the President had only such concern or interest therein as Congress allowed or granted. Under the doctrine of separation of powers, he possessed no constitutional prerogatives over such functions; neither was the Commission by statute charged with any duties or obligations affecting the functions and powers of the President. To spell out this vesting of the power of appointment in the

President the Congressional intent or implied power of removal would be contrary to the long line of cases which fix and limit the manner of determining the implied existence or grant of Executive power. Even if we assume that the President had a concern with the functions of the Commission, "* * * The duty of the President to see that the laws be executed is a duty that does not go beyond the laws or require him to achieve more than Congress sees fit to have within his power."[18]

III.

The Nature and Character of the Functions of the War Claims Commission

The main thrust of respondent's argument is that the War Claims Commission performed "purely executive functions" because it was neither "an arm of Congress" nor did it exercise any power of the judicial branch, but did perform functions related to the President's foreign relations power. The criteria which we should use in determining whether the Commission is "wholly disconnected from the executive department" are not the minutiae of each function which it was authorized to perform, but whether any of such functions was the "means of carrying into operation legislative or judicial powers."[19] The significant factor is not that the Commission may have exercised any executive function (as distinguished from *executive power* in the constitutional sense) but whether the act or functions it performs were in discharge and effectuation of legislative or judicial powers. For in its broadest sense, each of the three great branches regularly performs acts and functions which in varying degree partake of the quality of the other. The controlling factor is whose "power" is being exercised, and in the case at bar we must

[18] *Myers* v. *United States*, *supra*, dissenting opinion Justice Holmes, p. 177.

[19] 295 U. S. 630.

determine if the Commission discharged and effectuated the powers of the legislative and/or judicial branch, if it did so, it was a quasi-legislative or quasi-judicial body. If it is discharged or effectuated "the executive power" vested in the President, then it had performed executive functions.

It is in this context that the functions of the Commission must be examined to determine whose powers the Congress intended the Commission to discharge or effectuate. It has never been a problem to ascertain the intent or understanding of individual members of the Congress but rather of the Congress as a legislative body. In the instant case we have ample evidence of what some members of Congress said they intended to accomplish but non of this can change the clear and unambiguous language of the Act itself (particularly the opening sentence thereof), the definitive reports of Congressional Committees[20] and of this Court.[21]

Can it be said that an instrumentality is performing an executive function when it is charged with responsibility "* * * to make an inquiry and report with respect to war claims * * *". because "* * * the question of war claims and debts is too complex to be approached by the Congress on a piecemeal basis * * * so that the subject in its entirety must be studied thoroughly before any intelligent action can be taken by Congress * * *."[22] Clearly the investigation called for by Section 8 of the Act was not the discharge or effectuation of the executive power but that of the Congress. The respondent would minimize the importance of this phase of the Commission's functions by suggesting that the report it filed on March 31, 1950 (House Doc. No. 580, 81st Cong. 2nd Sess.) concluded its duties. It ignores the clear statement on pages 2 and 3 thereof, that

[20] House Report No. 976, 80th Cong., 2nd Sess.

[21] *Guessfeldt* v. *McGrath* 342 U. S. 308, 315.

[22] See fn. 20 *supra*.

it was not intended as the full and complete study required by Congress and that a more thorough study would be submitted at a later date. The respondent would give the impression that the subsequent report was merely a gratuitous gesture by the Commission, but even a casual reading of the later report (House Document No. 67, 83rd Cong., 1st Sess.), makes it clear that it is supplementary to, and integrated with, the earlier one. The inescapable fact is that if the Act assigned no other function to the Commission but making the investigation and reports above mentioned, it had performed a function in discharge and effectuation of legislative power requiring it to be "independent of executive control * * * and free to exercise its judgment without the leave or hindrance of any other official or any department of government."

The respondent would also have us believe that the function of the War Claims Commission "was related" to the foreign relations power. It does not make it clear what the words "was related" mean but does suggest that the manner of disposing of monies in the Treasury of the United States acquired through vesting of enemy alien assets and reparations remained a responsibility of and prerogative of the President. The ineluctable conclusion that must be drawn from historical and contemporaneous events is directly to the contrary. The fallacy of the respondent's position is its incorrect interpretation of history and its failure to view in their true light the program and purposes set forth in the Act.

From the first days of the founding of our country to the present day, the Congress has been concerned and confronted with the problem and nature of relief to be afforded to its citizens and nationals who had suffered most from the rigors and ravages of war[23]. During World War II and prior to the ratification of any treaty with Germany

[23] See Supplementary Report of War Claims Commission House Doc. No. 67, 83rd Cong., 1st Sess., p. 64, et seq.

or Japan affecting vested assets or reparations, the Congress became concerned with the problem of war claims and damage and ways of relieving the suffering and damage of its citizens and nationals.[24] Part of the results of this concern was the creation on April 30, 1946 of the Philippine War Damage Commission (50 U. S. C. App. Sec. 1751, et seq.) and the War Claims Commission in 1948. This legislation therefore did not represent a desire to implement treaties not yet in existence or dispose of "enemy assets" (as the respondent suggests) but the expenditure of funds covered *into the Treasury of the United States*[25] for the relief and benefit of those whom the Congress thought should have the benefits of these funds. (Funds which theoretically could have been used for other purposes ordinarily requiring the appropriation of monies obtained from taxes).

Neither at the time such legislation was enacted nor subsequently did any of the treaties signed by this country with the axis powers impose any limitations or restrictions or state what we must or should do with such vested assets or reparations.[26] Even if any such treaty did require the creation of a tribunal or provide the manner in which reparations funds should be disbursed, the responsibility and authority therefor was in the Congress and not the President.[27]

The respondent by inference and quotations taken out of context would like to create the impression, that all the

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[24] See hearings on S. 1322, Subcommittee of Senate Judiciary Committee, 79th Cong., 2nd Sess., April 17, 1946.

[25] 50 U.S.C. App. Sec. 12, 39.

[26] We do not, therefore, have the situation which prompted the creation of the Mixed Claims Commission after World War I.

[27] "* * * The treaty certainly created no tribunal by which these damages were to be adjusted * * *. It rested with Congress to provide one according to treaty stipulation. But when that tribunal was appointed, it derived its whole authority from the law creating it and not from the treaty and Congress had the right to regulate its proceedings and limit its power * * *." *United States* v. *Ferreira*, 13 How 40, 46.

Commission was charged with, was determination of "claims of American citizens against foreign countries" and to pay them out of "alien property funds." But this is likewise contrary to the facts. The Act did not authorize the President to make claims or diplomatic representation to the axis powers on behalf of our citizens or nationals nor did the treaties preserve any right to American citizens or nationals to make further claim against any of the former enemy countries. The funds were assets of the United States, subject to disposition by the will of the Congress, and no citizen had any enforceable claim against it.[28] If Congress had not enacted this legislation creating the right to claim payment and the tribunal to adjudicate such right, there would have been no way for any United States citizen to compel the payment to him of any portion of such funds.[29]

Whenever in the history of our country, citizens petitioned for payment of their "war claims" out of reparations or other funds of the Treasury, it was made to the Congress and not to the President. It was the Congress which possessed sole authority to create the right to make a claim and receive payment and the tribunal to adjudicate them. The determination of the right to receive payment out of "French Spoilation Funds" was ultimately delegated to the United States Court of Claims, 23 Stat. 283, and the deter-

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[28] See, however, Senate Resolution 257, and Report #1466, 83rd Cong., 2nd Sess., and *Blabon et al.* v. *United States*, No. Cong. 5-54, now pending in the United States Court of Claims as to the existence of a cause of action against the United States for waiving the claims its citizens possessed against China.

[29] See *United States* v. *Weld*, 127 U. S. 51, *Williams* v. *Heard*, 140 U. S. 529, holding the United States was under no legal or equitable obligation to pay to its citizens (who had damage claims) the proceeds of "reparations" obtained from Great Britain for such damage to property of American citizens. See Report of War Claims Commission, House Doc. No. 67, 83rd Congress, 1st Sess., for history of Congressional action taken on reparation funds obtained from France in 1801, from Britain following War of 1812, Spanish Spoilation Claims of 1819 and claims following Mexican War of 1848, Civil War, Spanish American War and World War I.

mination of the right to receive payment out of funds received from Great Britain following the Civil War was delegated to a "special court" known as "Court of Commissioners of Alabama Claims", 18 Stat. 245.[30] When the circumstances were such that the provisions of a treaty or executive agreement required the establishment of a body or tribunal which would pass on *claims*, the Congress (and not the President) created the body or tribunal and vested authority to appoint the members (See 3 Stat. 639, 9 Stat. 39, 30 Stat. 1754). Where the treaty required the creation of an international or "mixed" claims commission to "adjudicate" rights of American nationals or citizens *against* a foreign power, as was the case after World War I, it was the Congress which vested the authority to appoint American members thereof and decided how the recommendations of the Mixed Claims Commission were to be implemented and paid.[31]

The petitioner's brief (p. 20) made it quite clear that he was not asserting the exercise of "judicial power" contemplated by Article III of the Constitution, but rather those of a "Legislative Court." (See *Williams* v. *United States*, 289 U. S. 553) Obviously, if the functions assigned to the Commission would constitute it an "inferior court" exercising "judicial power" within the scope of Article III of the Constitution, it could under no circumstances be part of the executive branch and subject to the President's control in view of the language of Section I, Article III, of the Constitution. It is because the War Claims Commission was required to adjudicate *according to law and*

[30] It is significant to note that the members of this tribunal were appointed by the President after Senate confirmation to serve for a fixed period of time without any grant of power to remove for any cause.

[31] The Mixed Claims Commission was established after World War I as the result of the provisions of an Executive Agreement dated August 10, 1922 (42 Stat. 2200) to determine the nature and extent of claims *against* Germany. It was not until Congress enacted the War Claims Act of 1928 (45 Stat. 254) that provision was made for payment of the awards recommended by the Mixed Claims Commission. The War Claims Commission was therefore, *not* analogous to this Mixed Claims Commission.

not executive policy that its function was to discharge and effectuate the judicial power, requiring it under the doctrine of separation of power to be free from control by the President. To argue that the judicial power can be exercised only where there is a controversy between two or more adversaries is to ignore realities.

Judicial power is exercised by courts in matters lacking adversaries or controversy, i.e., naturalization, proceedings for change of name, adoption, lunacy and sanity commission, approval of incorporation of charitable corporations and other ex parte proceedings. The case of *United States* v. *Ferriera, supra*, on which the Government relies so heavily, decided not that there was lacking adversaries or controversy, but rather that an appeal could not lie from a "decision" or "judgment" of a court which was *subject to approval* of the Secretary of the Treasury before it would be honored. (In the instant case, the Secretary of the Treasury had only one function and that was to disburse on certificate of the War Claims Commission). The function of the Commission must be deemed to have discharged or effectuated judicial power, similar to that performed by the United States Court of Claims when it considers, pursuant to 28 U. S. C. 1492 and 2509 claims and other matters referred to it by Congress. Will it be argued that the function of the Court of Claims in rendering judgment against the United States on claims which could not have been litigated if Congress had not provided the right and the forum to do so under the Tucker Act, is not the discharge or effectuation of part of the judicial power. Can it be said that the granting of a right to relief to prisoners of war, civilian internees, and religious organizations (for internment, cruel and inhumane treatment, damage and destruction of property) and the adjudication of these rights is not a discharge or effectuation of similar judicial power simply because the Act provided a thoroughly delineated frame of reference to follow in making adjudications which

were to be *final and conclusive on all questions of law and fact and not subject to review by any other official of the United States or by any court by mandamus or otherwise?* Does this process of adjudication partake less of "a Judiciary quality" than the adjudication of what constitutes a violation of the Internal Revenue laws, illegal exaction of taxes, illegal restraint of trade, monopoly or illegal possession or sale of drugs or any other statutory crime, offense or violation?

If it be concluded that such functions are not part of the judicial power or do not partake of "a Judiciary quality," does it not follow that such functions are an extension of or discharge or effectuation of the legislative power? Is it only to rate-making and regulatory bodies that Congress can validly delegate the performance of its powers? Is the determination of whether a given person falls within a class entitled to receive funds of the United States for relief from war damage, injury or suffering from internment or cruel and inhumane treatment, no longer the discharge or effectuation of legislative power but executive because it is now delegated to an independent body rather than to a committee of Congressmen or Senators? Is such an instrumentality by virtue of the vesting of the power of appointment thereto in the President to be subject to his coercive influence while discharging or effectuating judicial or legislative power?

It is respectfully suggested to the Court that the functions being performed by the Commission were in discharge and effectuation of both judicial and legislative powers; that the functions being performed are not and never were within the scope of the President's constitutional grants of authority. If the executive branch ever possessed any influence over such agencies, it was because Congress *chose* to delegate it to that branch and not because the President possessed constitutional authority to do so. Whether any such action by Congress was a valid delegation

of power need not be decided here. What is at issue is whether *absent* an express grant of authority, the President possessed as part of his executive power or the power to appoint the implied authority to remove the petitioner without cause. To hold that he does, will open the door to encroachment by one branch of government on the other. We do not have here the situation which appeared to have disturbed the late Chief Justice Taft.[32] His concern was that "Congress is getting into the habit of forming boards *who really exercise executive power* * * *" [emphasis added]. We do not have a board which really exercises executive power in the instant case nor in the case of Securities and Exchange Commission, Federal Communications Commission and Federal Power Commission. The Court should re-affirm the power of Congress to create such boards free of executive control and should also confirm, that absent an express grant of authority to remove the President possesses no power to remove quasi-legislative or quasi-judicial officers appointed by him.

CONCLUSION

The War Claims Commission was performing functions which discharged and effectuated legislative and judicial powers. The Act creating the Commission fixed the term of office of the members thereof and did not grant to the President *any* power to remove the petitioner without cause. The President did not by virtue of his executive power or power of appointment, possess the authority to remove without cause, members of this Commission. The petitioner was for all the foregoing reasons illegally removed from office prior to the expiration of his term. It is, therefore, respectfully submitted that the judgment of the court below should be reversed.

[32] See Resp. Br. 36, fn 72

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In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 615

MYRON WIENER, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINION BELOW

The opinion of the United States Court of Claims (Pet. App. pp. 1a–11a) is reported at 142 F. Supp. 910.

JURISDICTION

The judgment of the Court of Claims, dismissing the petition filed in that court, was entered on July 12, 1956[1] (R. 47). By order of the Chief Justice, dated

[1] The judgment was amended on October 2, 1956, so as to allow recovery on a Government counterclaim for certain expenses previously advanced petitioner by the Government. However, in a subsequent order dated December 7, 1956, the Court of Claims vacated its prior amending order and, pursuant to petitioner's motion, separated the counterclaim from the matters involved in the instant petition.

October 3, 1956, the time within which to file a petition for a writ of certiorari was extended to and including December 8, 1956. The petition was filed on December 8, 1956. The jurisdiction of this Court is invoked under 28 U. S. C. 1255 (1).

QUESTION PRESENTED

Whether the President, in his discretion, may remove a member of the War Claims Commission.

STATUTES INVOLVED

The War Claims Act of 1948 (62 Stat. 1240, 50 U. S. C. App. 2001, *et seq.*) as amended by the Act of October 15, 1949, 63 Stat. 881, provides in part:

> SEC. 2. (a) There is hereby established a commission to be known as the War Claims Commission (hereinafter referred to as the "Commission") and to be composed of three persons to be appointed by the President, by and with the advice and consent of the Senate. At least two of the members of the Commission shall be persons who have been admitted to the bar of the highest court of any State, territory, or the District of Columbia. The members of the Commission shall receive compensation at the rate of $14,000 a year. The terms of office of the members of the Commission shall expire at the time fixed in subsection (d) for the winding up of the affairs of the Commission.
>
> * * * * * *
>
> (c) The Commission may prescribe such rules and regulations as may be necessary to enable it to carry out its functions, and may delegate functions to any member, officer, or employee of the Commission. The Commission

shall give public notice of the time when, and the limit of time within which, claims may be filed, which notice shall be published in the Federal Register. The limit of time within which claims may be filed with the Commission shall in no event be later than two years after the date of enactment of this Act.[2]

(d) The Commission shall wind up its affairs at the earliest practicable time after the expiration of the time for filing claims, but in no event later than three years after the expiration of such time.

STATEMENT

The undisputed facts may be briefly summarized as follows:

On June 8, 1950, President Truman, with the advice and consent of the Senate, appointed petitioner to be a member of the War Claims Commission. Thereafter, on December 10, 1953, having refused to resign at the request of President Eisenhower, petitioner was informed by letter that, in the national interest, the President felt compelled to complete the administration of the War Claims Act with personnel of his own choosing and that he was, therefore, removing petitioner from the office of a War Claims Commissioner (R. 43).

On August 20, 1954, Wiener filed a petition in the Court of Claims in which he alleged that his removal from the office of War Claims Commissioner was illegal and that he was entitled to the salary he would have earned ($8,254.00) had he not been removed from

[2] By Joint Resolution of April 5, 1951 (65 Stat. 28), the date of March 31, 1952, was fixed as the final date for filing claims.

office.[3] The Court of Claims, Judge Whitaker dissenting, dismissed the petition.

ARGUMENT

Petitioner apparently recognizes that the President may, in his discretion, remove any executive official whose nomination and appointment are made by him. *Parsons* v. *United States,* 167 U. S. 324; *Shurtleff* v. *United States,* 189 U. S. 311; *Myers* v. *United States,* 272 U. S. 52; *Humphrey's Executor* v. *United States,* 295 U. S. 602; *Morgan* v. *Tennessee Valley Authority,* 115 F. 2d 990 (C. A. 6), certiorari denied, 312 U. S. 701; see *Ex Parte Hennen,* 13 Pet. 230, 259. However, relying on the Court of Claims' characterization of the War Claims Commission as a quasi-legislative and quasi-judicial agency,[4] petitioner suggests that the

[3] Prior thereto, on February 3, 1954, petitioner had filed suit in the nature of *quo warranto* proceedings in the United States District Court for the District of Columbia against the successor incumbent members of the War Claims Commission (Civil Action No. 447-54). A hearing was had on the respondents' motion to dismiss or in the alternative for summary judgment, and on March 30, 1954, the action was dismissed in accordance with the court's opinion of March 25, 1954, upholding the President's removal of petitioner as legal. An appeal was taken, but inasmuch as the War Claims Commission was abolished on July 1, 1954, all of its functions and personnel being transferred to a newly established Foreign Claims Settlement Commission under the terms of Reorganization Plan No. 1 of 1954 (68 Stat. 1279), the appeal was dismissed as moot by stipulation of the parties (R. 45).

[4] We need not here take issue with the Court of Claims' description of the War Claims Commission as a "quasi-legislative" and "quasi-judicial" agency since, as that court properly held, in the absence of a congressional purpose to limit the power of removal, such a characterization is irrelevant to the problem of removal. It is appropriate to note, however, that the War Claims Com-

President has no removal power with respect to such agencies other than that which Congress has seen fit expressly to grant him. Petitioner also urges that the absence of specific causes of removal in the War Claims Act evidences a Congressional intent that none should be available to the appointing authority. Both of these arguments, properly rejected by the Court of Claims, find no support in the whole line of precedents in this area of the law, including the *Humphrey* case, *supra*. Review by this Court is unnecessary.

1. The Court, in the *Myers* case, *supra*, held that the removal power was an integral part of the executive power vested in the President. The Court's conclusion is best summed up in its own language (272 U. S. at 163–4):

> Our conclusion on the merits, sustained by the arguments before stated, is * * * that the provisions of the second section of Article II, which blend action by the legislative branch, or by part of it, in the work of the executive, are limitations to be strictly construed and not to be extended by implication; that the President's power of removal is further established as an incident to his specifically enumerated function of appointment by and with the advice of the Senate, but that such incident does not by im-

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mission was engaged in administering a claims program similar to those carried on by a number of agencies clearly within the executive departments. Claims programs involving the same techniques of operations and the performance of virtually identical functions are carried out by the Veterans Administration (compensation and pension claims), the Department of Labor (federal employees' compensation claims) and the Department of Justice (Japanese relocation claims).

plication extend to removals the Senate's power of checking appointments; and finally that to hold otherwise would make it impossible for the President, in case of political or other differences with the Senate or Congress, to take care that the laws be faithfully executed.

Up until now, this particular construction of the Constitution has never been seriously challenged. Long before *Myers*, the issue in all of the removal cases had been, not the existence of the Presidential power of removal, but the Constitutional right of the Congress to interfere with or limit its exercise—an issue not reached in this case since the War Claims Act of 1948 contains no such limitation. And the startling contention of petitioner that Congress might by silence alone deprive the President of the right to remove officers appointed by him finds no support in *Humphrey* or in any of the cases preceding that decision.[1] To the contrary, this Court has consistently held that a statute would not be interpreted as attempting to limit the power of removal in the absence of clear and express language to that end. *Parsons* v. *United States*, *supra*, p. 4; *Shurtleff* v. *United States*, *supra*, p. 4.

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[1] "To take away this power of removal in relation to an inferior office created by statute, although that statute provided for an appointment thereto by the President and confirmation by the Senate, would require very clear and explicit language. It should not be held to be taken away by mere inference or implication. * * * The right of removal would exist if the statute had not contained a word upon the subject. It does not exist by virtue of the grant, but it inheres in the right to appoint, unless limited by Constitution or statute. It requires plain language to take it away" (*Shurtleff*, 189 U. S. at 315, 316).

Humphrey's case, *supra*, p. 4, is not opposed; indeed, that ruling reemphasized the well-established principle that, absent Congressional limitation, the removal power of the President is absolute. There, the applicable statute provided that "Any commissioner may be removed by the President for inefficiency, neglect of duty, or malfeasance in office." 38 Stat. 717; 15 U. S. C. 41. Humphrey was removed by the President without attempt to rest the removal upon any of the grounds specified in the statute. This Court, finding in the legislative history of the Federal Trade Commission Act and in the nature and functions of the Commission a clear Congressional aim that the Commission should be independent of the executive authority, held that the President's power of removal was limited to the causes enumerated in the statute. There is nothing in *Humphrey* to suggest that the President has such removal power[*] with respect to quasi-legislative and quasi-judicial agencies *only* as Congress sees fit to grant him expressly, or that where no causes for removal are listed the power to remove is entirely eliminated.

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[*] See the following excerpts from the *Humphrey* opinion:

"The question first to be considered is whether, by the provisions of § 1 of the Federal Trade Commission Act already quoted, *the President's power is limited to removal for the specific causes enumerated therein.*" 295 U. S. at 621. [Emphasis added.]

"*We conclude that the intent of the act is to limit the executive power of removal* to the causes enumerated. * * *." 295 U. S. at 626. [Emphasis added.]

"If Congress is without authority to prescribe causes for removal of members of the trade commission and *limit executive*

2. Throughout the long debate upon the War Claims Act and the extensive hearings before both houses of Congress,[7] there was not the slightest expression of any purpose by any member of either House to limit in any way the executive power of removal.[8] If such were the purpose, it would seem reasonable to expect that Congress, with knowledge of the *Humphrey* case, and having before it the clear expressions of this court in *Parsons* and *Shurtleff* that any intention to limit the President's power of removal should be explicitly expressed, would have expressed its purpose somewhere in the Act. See *e. g.* Budget and Accounting Act of 1921, 42 Stat. 23, 31 U. S. C. 43 (Comptroller General); Railway Labor Act, 44 Stat. 579, 45 U. S. C. 154 (National Mediation Board); National Labor Relations Act, 49 Stat. 451, 29 U. S. C. 153 (a) (National Labor Relations Board); Subversive Activities Control Act of 1950, 64 Stat. 997, 50 U. S. C. 791 (a) (Subversive Activities Control Board).

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power of removal accordingly, * * *." 295 U. S. at 629. [Emphasis added.]

Congressional "authority includes, as an *appropriate* incident, *power* to fix the period during which they shall continue in office, and *to forbid their removal except for cause in the meantime.*" 295 U. S. at 629. [Emphasis added.]

[7] The House hearings were published by the 80th Congress under the title "Enemy Property Commission." The Senate hearings were published under the title "War Claims Commission."

[8] If any concern of this nature was expressed, it was that Congress feared that the War Claims Commission might seek to perpetuate itself (94 Cong. Rec. 552, 566).

Total silence on the part of Congress in the War Claims Act of 1948 on an issue as far reaching as the President's power of removal cannot be construed, we submit, as a congressional purpose to limit that power. As the court below stated (Pet. App. 9a):

> The Supreme Court found in the *Humphrey* case a Congressional intent, shown by the statutory language and the legislative history, to limit the President's power. That decision no doubt tempered the strict doctrine stated in the *Shurtleff* case. But it did not discard it to the extent that a court should conclude that the President's power had been abrogated even though there was no evidence at all, or substantially no evidence, that Congress so intended. There is no evidence whatever of any such intent in relation to the statute under construction in the instant case.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the decision of the Court of Claims is correct and that the petition for a writ of certiorari should be denied.

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JANUARY 1957.

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SUPREME COURT, U.S.

In the Supreme Court of the United States

October Term, 1957

[redacted], Petitioner,

v.

United States of America,

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

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In the Supreme Court of the United States

OCTOBER TERM, 1957

No. 52

MYRON WIENER, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

BRIEF FOR THE UNITED STATES

OPINION BELOW

The opinion of the United States Court of Claims, dated July 12, 1956 (R. 13-22), is reported at 135 C. Cls. 827.

JURISDICTION

The judgment of the United States Court of Claims was entered on July 12, 1956 (R. 13). A motion to amend the judgment, filed on August 13, 1956, was granted on October 2, 1956 (R. 28). On October 3, 1956, by order of the Chief Justice, the time for filing the petition for a writ of certiorari was extended to and including December 8, 1956 (R. 29). The petition for a writ of certiorari, filed on December 8, 1956, was granted on January 21, 1957 (R. 30). The jurisdiction of this Court rests on 28 U.S.C. 1255(1).

QUESTIONS PRESENTED

The statute creating the War Claims Commission provides that the Commissioners' term of office shall expire at the time established for the winding up of the affairs of the Commission. The statute does not specify any grounds for the removal of a Commissioner by the President. Petitioner, a former War Claims Commissioner removed by the President, sues to recover the salary alleged to have accrued after his dismissal. The questions presented are:

1. Whether a War Claims Commissioner was an executive officer subject to the President's unlimited removal power.

2. Whether, assuming that petitioner was not an executive officer, the War Claims Act of 1948 limited the President's removal power.

CONSTITUTIONAL PROVISIONS AND STATUTES INVOLVED

1. The Constitution of the United States provides in pertinent part:

> Article I.
>
> SECTION 1. All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.
>
> * * * * *
>
> Article II.
>
> SECTION 1. The executive Power shall be vested in a President of the United States of America.
> * * *

SECTION 2. * * *

He shall have Power, by and with the Advice and Consent of the Senate, to make Treaties, provided two-thirds of the Senators present concur; and he shall nominate, and by and with the Advice and Consent of the Senate, shall appoint Ambassadors, other public Ministers and Consuls, Judges of the supreme Court, and all other Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law; but the Congress may by Law vest the Appointment of such inferior Officers, as they think proper, in the President alone, in the Courts of Law, or in the Heads of Departments.

* * * * *

SECTION 3. He shall from time to time give to the Congress Information of the State of the Union, and recommend to their Consideration such Measures as he shall judge necessary and expedient; he may, on extraordinary Occasions, convene both Houses, or either of them, and in Case of Disagreement between them, with Respect to the Time of Adjournment, he may adjourn them to such Time as he shall think proper; he shall receive Ambassadors and other public Ministers; he shall take Care that the Laws be faithfully executed, and shall Commission all the Officers of the United States.

* * * * *

Article III.

SECTION 1. The judicial Power of the United States, shall be vested in one supreme Court, and

in such inferior Courts as the Congress may from time to time ordain and establish. The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behaviour, and shall, at stated Times, receive for their Services, a Compensation, which shall not be diminished during their Continuance in Office.

SECTION 2. The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime Jurisdiction;—to Controversies to which the United States shall be a Party;—to Controversies between two or more States;—between a State and Citizens of another State;—between Citizens of different States;—between Citizens of the same State claiming Lands under Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens or Subjects.

* * * * *

2. In December 1953, Section 2 of the War Claims Act of 1948, 62 Stat. 1240, as amended by the Acts of May 27, 1949 (63 Stat. 112), October 15, 1949 (63 Stat. 880), August 16, 1950 (64 Stat. 449), and April 5, 1951 (65 Stat. 28), 50 U.S.C. App. 2001, provided in pertinent part as follows:

SEC. 2. (a) There is hereby established a commission to be known as the War Claims Commission (hereinafter referred to as the "Commis-

sion") and to be composed of three persons to be appointed by the President, by and with the advice and consent of the Senate. At least two of the members of the Commission shall be persons who have been admitted to the bar of the highest court of any State, Territory, or the District of Columbia. The members of the Commission shall receive basic compensation at the rate of $14,000 per annum. The terms of office of the members of the Commission shall expire at the time fixed in subsection (e) of this section for the winding up of the affairs of the Commission.

. . . . .

(c) The Commission may prescribe such rules and regulations as may be necessary to enable it to carry out its functions, and may delegate functions to any member, officer, or employee of the Commission. The Commission shall give public notice of the time when, and the limit of time within which, claims may be filed, which notice shall be published in the Federal Register. The limit of time within which claims may be filed with the Commission shall in no event be later than March 31, 1952. The Commission shall take immediate action to advise all persons entitled to file claims under the provisions of this Act administered by the Commission of their rights under such provisions, and to assist them in the preparation and filing of their claims.

. . . . .

(e) The Commission shall wind up its affairs at the earliest practicable time after the expiration of

the time for filing claims, but in no event later than three years after the expiration of such time.

3. Other pertinent statutory provisions may be found in the Statutory Appendix (hereinafter referred to as "Stat. App".), copies of which have been filed with the Clerk.

STATEMENT

1. *The War Claims Commission.* The fundamental issue involved in this case is whether the President had the power to remove petitioner, a member of the former War Claims Commission,[1] from his office. Under the decisions of this Court, the answer to this question largely depends on "the character of the office" involved.[2] It therefore appears essential to give a short account of the nature and functions of the War Claims Commission.

Pursuant to the Trading with the Enemy Act of 1917, as amended, 40 Stat. 411, 50 U.S.C. App. 1-40 (Stat. App. 3-49), the assets of Germany and Japan, and of their residents, located in the United States, were seized by the Government during World War II. In 1948 the value of those assets was estimated at nearly $300,000,000.[3] The surrender and post-surrender conditions imposed upon the Axis powers, subsequently ratified in bilateral agreements concluded with those countries,

[1] The War Claims Commission, established by the War Claims Act of 1948, Section 2, 62 Stat. 1240, 50 U.S.C. App. 2001 was abolished as of July 1, 1954, by Reorganization Plan No. 1 of 1954, 19 F.R. 3985, 68 Stat. 1279, 22 U.S.C. (Supp. IV) 1621 (Stat. App. 154).

[2] *Humphrey's Executor* v. *United States*, 295 U.S. 602, 631-632.

[3] *War Claims Commission*, Hearings before a Subcommittee of the Committee on the Judiciary, United States Senate, 80th Cong., 2d Sess. (hereafter referred to as "*War Claims Commission*"), p. 13.

provided that these assets would be retained by the Allies to be used on account of reparations.[4]

The War Claims Act of 1948, 62 Stat. 1240 (Stat. App. 73-89), is the result of congressional efforts to make those German and Japanese assets available for the payment of certain reparation claims. The bill, H.R. 4044, as passed by the House of Representatives,[5] prohibited the return of the German or Japanese assets to their owners and granted some benefits to civilians interned by Japan. The internee program was to be administered by the Federal Security Administrator and payments were to be made out of appropriated funds. Title II of the House bill provided for the establishment of a War Claims Commission consisting of three Commissioners to be appointed by the President. The sole function of this Commission was to submit to the President for transmission to Congress a comprehensive report and recommendation with respect to war claims, especially those based on the maltreatment of prisoners of war, and their payment out of the assets vested in the Alien Property Custodian. The Commission was to cease to exist one year after a majority of its members first appointed first took office, but the President could fix an earlier expiration date.

Hearings on H.R. 4044 were held before a Senate

[4] Report of the War Claims Commission, H. Doc. 580, 81st Cong., 2d Sess., pp. 27-33. *See, e.g.*, the Final Act of the Paris Conference on Reparation, Art. 6, T.I.A.S. 1655, pp. 13-14 (Stat. App. 161), providing specifically that Germany's external assets would not be returned to her but charged against reparation claims. For the subsequent agreements, see Peace Treaty with Japan, Chapter V, Arts. 14, 16, T.I.A.S. 2490, pp. 14, 19 (Stat. App. 171, 175); Convention with Germany on the Settlement of Matters Arising out of the War and Occupation, dated October 23, 1954, Chapter 6, Art 3, T.I.A.S. 3425, p. 1554 (Stat. App. 164).

[5] *War Claims Commission, supra*, fn. 3, pp. 1-5.

Committee during the early part of 1948, *i.e.*, two and a half years after the cessation of the hostilities. It was felt then that the time for making studies had passed, and that the claims of American prisoners of war and internees against Germany and Japan based upon the violation of the Geneva Convention should and could be determined immediately.[6] Since such claims were in the nature of reparations, they were to be paid out of the German and Japanese funds held by the Alien Property Custodian and not out of funds provided by the American taxpayer.[7] The claims were to be determined by the War Claims Commission, which was to receive a status analogous to that of the Mixed Claims Commission established after World War I,[8] although it was to be staffed only with American Commissioners.[9]

The Act, as agreed upon in the Conference Committee, followed in substance the Senate amendments (H. Rept. 2439, 80th Cong., 2d Sess., p. 10). It provided for the creation of a War Claims Fund in the Treasury of the United States comprised of the net proceeds of the German and Japanese assets vested in the Alien Property Custodian.[10] Four categories of claimants were to be compensated from this fund: first, the employees of Government contractors who had been

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[6] *War Claims Commission, supra*, fn. 3, pp. 73, 82, 83, 97, 115-116.

[7] *War Claims Commission, supra*, fn. 3, pp. 73, 80, 91, 111, 134, 203, 204; S. Rept. 1742, 80th Cong., 2d Sess., pp. 7-8; 94 Cong. Rec. 8752.

[8] Cf. Settlement of War Claims Act of 1928, 45 Stat. 254 (Stat. App. 53ff).

[9] *War Claims Commission, supra*, fn. 3, pp. 97, 129; 94 Cong. Rec. 8752.

[10] Sections 12, 13, 62 Stat. 1246, 1247, 50 U.S.C. App. 2011, 2012 (Stat. App. 86).

detained by the enemy;[11] second, other civilians interned by the Japanese;[12] third, prisoners of war or their survivors;[13] and fourth, religious organizations which had assisted the members of the armed forces of the United States.[14] The claims of the employees of Government contractors were to be administered by the Federal Security Administrator;[15] the other three types of claims, *i.e.*, those of civilian internees, prisoners of war, and religious organizations, were to be determined by the War Claims Commission created by Section 2 of the Act.[16]

The Commission was composed of three Commissioners appointed by and with the advice and consent of the Senate.[17] The term of each of the Commissioners

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[11] Section 4, 62 Stat. 1241, 50 U.S.C. App. 2003 (Stat. App. 74-76).

[12] Section 5, 62 Stat. 1242, 50 U.S.C. App. 2004 (Stat. App. 76-79).

[13] Section 6, 62 Stat. 1244, 50 U.S.C. App. 2005 (Stat. App. 80-83). Originally, prisoner of war claims were limited to those based on the violation by an enemy government of its duty to furnish prisoners of war the quantity of food to which they were entitled under the Geneva Convention. The Act of April 9, 1952, 66 Stat. 47, authorized in addition the filing of claims based on inhumane treatment and the violation of the Geneva Convention relating to the labor of prisoners. The scope of the section was extended to prisoners of the Korean War by the Act of August 21, 1954, 68 Stat. 759, 761, *i.e.*, after petitioner's removal (December 10, 1953, Fdg. 4, R. 24) and the abolition of the War Claims Commission (*supra*, fn. 1).

[14] Section 7, 62 Stat. 1245, 50 U.S.C. App. 2006 (Stat. App. 83). The scope of Section 7 was considerably broadened by the Act of April 9, 1952, 66 Stat. 47, 48.

[15] Section 4, 62 Stat. 1241, 50 U.S.C. App. 2003 (Stat. App. 74). Reorganization Plan No. 19 of 1950, 15 F.R. 3178, 64 Stat. 1271, transferred the functions of the Federal Security Administrator under this section to the Department of Labor.

[16] 62 Stat. 1240, 50 U.S.C. App. 2001 (*supra*, pp. 4-5).

[17] At least two Commissioners had to be admitted to the bar of any State, Territory, or of the District of Columbia.

was to expire "at the time fixed * * * for the winding up of the affairs of the Commission", *viz.*, not later than three years after the expiration of the time for the filing of claims, which originally expired two years after the enactment of the statute,[18] *i.e.*, on July 3, 1950. The Joint Resolution of April 5, 1951, 65 Stat. 28, extended the filing time to March 31, 1952. The Commission had the usual authority to prescribe the rules and regulations necessary to carry out its functions.[19] The Act of August 16, 1950, 64 Stat. 449,[20] conferred upon the Commission the power to issue administrative subpoenas and to invoke the aid of the federal courts in the case of the failure or refusal of a witness to comply with such subpoena.

The functions of the Commission were to determine the claims of internees, prisoners of war, and religious organizations. If a claim was denied in full or in part, the claimant was entitled to a hearing before the Commission or its representative. According to the last report filed by the War Claims Commission, only 12,691 claimants out of a total of 497,849 (or approximately 3%) availed themselves of that privilege.[21] The Commission's award was "final and conclusive on all questions of law and fact and not subject to review by any other official of the United States or by any court by mandamus or otherwise * * *."[22]

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[18] Section 2(c), 62 Stat. 1240, 50 U.S.C. App. 2001(c), now 50 U.S.C. App. 2001(b).

[19] Section 2(c), 62 Stat. 1240, 50 U.S.C. App. 2001(c), now 50 U.S.C. App. 2001(b).

[20] Paragraph 2(d) added by the Act of August 16, 1950, was redesignated Paragraph 2(c) by the Act of August 21, 1954, 68 Stat. 759, 50 U.S.C. App. (Supp. IV) 2001(c) (Stat. App. 74).

[21] War Claims Commission, Ninth Semi-annual Report, pp. 6, 8.

[22] Section 11, 62 Stat. 1246, 50 U.S.C. App. 2010 (Stat. App. 85).

In addition, the Commission was charged, as originally provided in the House bill (*supra*, p. 7), with the preparation by March 31, 1950, of a report to the President for submission to Congress containing factual data on additional types of war claims and recommendations for further legislation.[23] This report was submitted to the President on March 31, 1950, and transmitted to the Congress in due course. H. Doc. 580, 81st Cong., 2d Sess. Although the Act did not provide for the preparation of any further reports of this type,[24] the Commission, on January 16, 1953, submitted a Second Study Report to the President.[25] As the result of the review of this report by the Administration in the early part of 1954, the President on April 29, 1954, transmitted to Congress the Reorganization Plan No. 1 of 1954.[26] This plan,[27] approved by Congress on June 20, 1954, abolished the War Claims Commission as of July 1, 1954, and transferred its functions, as well as those of the International Claims Commission of the United States,[28] to the newly created Foreign Claims

[23] Section 8, 62 Stat. 1245, 50 U.S.C. App. 2007 (Stat. App. 84-85). Originally this report was due on March 31, 1949. The Act of May 27, 1949, 63 Stat. 112, extended the deadline by a year. This postponement was caused by the circumstance that the Commission was activated only in the Fall of 1949.

[24] Under Section 9, 62 Stat. 1246, 50 U.S.C. App. 2008 (Stat. App. 85), the Commission had to submit the customary periodic reports concerning its operations.

[25] H. Doc. 67, 83rd Cong., 1st Sess.

[26] *Settlement of Claims by the Foreign Claims Settlement Commission of the United States and its Predecessors from September 14, 1949 to March 31, 1955* (hereafter referred to as "*Settlement of Claims*"), p. 13.

[27] 19 F.R. 3985, 68 Stat. 1279, 22 U.S.C. (Supp. IV) 1621 (Stat. App. 154). See also H. Doc. 381, 83rd Cong., 2d Sess.

[28] The International Claims Commission of the United States had been established in the Department of State by the Act of March 10, 1950, 64 Stat. 12, 22 U.S.C. 1621-1627 (Stat. App. 93). It had

Settlement Commission of the United States (Fdg. 8, R. 24).

2. *Petitioner's service as War Claims Commissioner.* The original three War Claims Commissioners took office on September 14, 1949.[29] Following the death of Commissioner Lewis in November 1949,[30] President Truman, on February 28, 1950, nominated petitioner to be a member of the War Claims Commission (96 Cong. Rec. 2497). The nomination was confirmed by the Senate on June 2, 1950 (96 Cong. Rec. 8007). Petitioner took office on June 8, 1950 (Fdg. 3, R. 23-24).

On December 10, 1953, President Eisenhower removed petitioner from office on the ground that he regarded it "as in the national interest to complete the administration of the War Claims Act of 1948, as amended, with personnel of * * * [his] own selection" (Fdg. 4, R. 24).[31] The following day, the President gave recess appointments to Whitney Gillilland, Pearl Carter Pace, and Raymond T. Armbruster as members of the War Claims Commission (Fdg. 5, R. 24). The nominations of the three were sent to the Senate in February 1954 (Fdg. 7, R. 24) but had not been confirmed by July 1, 1954, when the War Claims Commission was abolished pursuant to Reorganization Plan No. 1 of 1954, which had been transmitted to Con-

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jurisdiction to determine claims under the Yugoslav Claims Agreement of 1948, and the Convention of October 11, 1950, between the United States and the Republic of Panama. *Settlement of Claims, supra*, fn. 26, p. 6.

[29] War Claims Commission, First Semi-annual Report, p. 2.

[30] *Ibid.*

[31] On the same day, President Eisenhower removed Commissioner Georgia L. Lusk. There was a vacancy on the Commission caused by the death of its Chairman, Daniel E. Cleary (Complaint, par. 6, R. 4).

gress on April 29, 1954. On July 23, 1954, the President nominated Whitney Gillilland to be Chairman, and Pearl Carter Pace and Henry J. Clay [32] to be Commissioners, of the Foreign Claims Settlement Commission. The Senate confirmed those nominations on August 6, 1954.[33]

3. *The quo warranto proceedings.* On February 3, 1954, petitioner instituted quo warranto proceedings in the United States District Court for the District of Columbia against Whitney Gillilland, Pearl Carter Pace, and Raymond T. Armbruster, the President's appointees to the War Claims Commission (Fdg. 11, R. 25). The theory of this action was that petitioner's term of office ran until the winding up of the affairs of the Commission (*supra*, pp. 10-11), that the President lacked power to dismiss him prior to the expiration of this term of office, that petitioner's removal from office was therefore null and void, and that respondents for lack of vacancies had not been appointed validly to the War Claims Commission (Fdg. 11, R. 25). Upon respondents' motion to dismiss, or in the alternative for summary judgment, the District Court ruled that "the War Claims Commissioners held their office at the pleasure of the President, the War Claims Act contains no limitation upon or prohibition of the exercise of the executive power of removal conferred upon the President of the United States",[34] and dismissed the action (Fdg. 11, R. 25).

The abolition of the War Claims Commission by

[32] Mr. Clay had been the Acting Chairman of the International Claims Commission of the United States (*supra*, p. 11). *Settlement of Claims*, *supra*, fn. 26, p. 9.

[33] *Settlement of Claims*, *supra*, fn. 26, p. 3.

[34] Appendix, *infra*, pp. 86-87.

virtue of Reorganization Plan No. 1 of 1954 (*supra*, p. 11) mooted petitioner's appeal before it could be heard. The parties consequently dismissed the appeal by stipulation, without, however, providing for the reversal or vacating of the District Court's judgment of dismissal (Fdg. 11, R. 25-26).

4. ***The proceedings below.*** After the dismissal of the appeal in the quo warranto proceedings, petitioner instituted this action in the Court of Claims. Here, he seeks to recover his compensation as a War Claims Commissioner from December 10, 1953, the day of his removal, to June 30, 1954, the last day before the War Claims Commission was abolished (R. 1-6). The action in the Court of Claims was based—as were the proceedings in the District Court—on the theory that the President did not have the power to remove petitioner during his "term of office". In its answer (R. 9-12), the Government pleaded that the President had the power to remove the petitioner from office, and that the final judgment in the District Court, which had not been vacated, was res judicata on the issues raised and determined in the Court of Claims proceedings.[35]

The Court of Claims dismissed the complaint (R. 13-21). The majority opinion, per Madden, J., held that the President had the power to remove petitioner because, although in the court's opinion the functions performed by the War Claims Commission were of a legislative and judicial—and not of an executive—nature, Congress had not limited the President's removal power. The court pointed out that, in the absence of any statutory provisions concerning removal, petitioner

[35] The pertinent parts of the record of the District Court proceedings were introduced in evidence in the court below in order to prove the plea of res judicata.

was either freely removable by the President or subject only to "cumbersome, time-consuming and rarely used method of impeachment" (R. 19). The majority did not believe that Congress intended the latter. If Congress actually had desired to curtail the President's powers of removal, it certainly would "have provided him with a limited power which would relieve Congress of the intolerable burden of an impeachment proceeding" (R. 20). The opinion also interpreted petitioner's "term of office" as designed, "not to protect the members of the Commission in their tenure, but to protect the Treasury and the public against the perpetuation of an agency which was meant to be temporary" (R. 20).

Whittaker, J., dissented on the ground that, if the War Claims Commission was a part of the judicial or legislative branches of the Government, the President could not remove petitioner unless the power to do this were conferred upon him by Congress in express words (R. 21-22).

SUMMARY OF ARGUMENT

A

A constitutional usage which goes back to the very first year in which the Constitution became effective establishes that the President has the unlimited power to remove all the "officers of the United States" appointed by him, subject only to constitutional or statutory restrictions with respect to non-executive officers.

The President's removal power rests essentially on three considerations: first, the canon of construction well known to the Founding Fathers that the power to appoint carries with it the power to remove; second, the President's constitutional duty to take care that

the laws be faithfully executed—a duty which cannot be performed if the President is unable to control the officers who carry out the laws; and third, the postulate of executive unity—*i.e.*, that the President is the head of the entire executive branch. The latter two considerations negate any power of Congress to curtail the President's power to remove officers in the executive branch (*Myers* v. *United States*, 272 U.S. 52). On the other hand, in the case of non-executive officers, the President's removal power is based merely on the rebuttable rule of construction that the power to appoint such officers implies the power to discharge them. Congress therefore may limit the President's power to remove those officers, either expressly or by clear implication (*Humphrey's Executor* v. *United States*, 295 U.S. 602). The circumstance that an officer is not in the executive branch thus does not mean that the President lacks the power to discharge him in the absence of congressional authorization, but only that Congress may curtail the power of removal flowing from the power of appointment.

While there has been some disagreement on the question as to whether Congress could limit the President's removal power, the basis of the Decision of 1789—*viz.*, that the power of removal is incident to the President's power of appointment—never has been questioned seriously. Indeed, as early as the 1830's, it was accepted as the practical construction of the Constitution even by those who opposed President Jackson's personnel policies. The President repeatedly has exercised the power to remove non-executive officers (*e.g.*, judges of territorial courts) and has been upheld by this Court.

Petitioner's theory that the President needs congressional authorization for the removal of non-executive officers thus not merely misconceives the settled law, but also conflicts with a constitutional usage which has been accepted as the correct interpretation of the Constitution for nearly 170 years.

B

Petitioner was an officer in the executive branch of the Government and accordingly subject to the President's unlimited removal power.

1. The War Claims Commission was not an arm of Congress. *Humphrey's Executor* v. *United States*, 295 U.S. 602, is concerned with independent regulatory commissions—*i.e.*, with agencies which administer incomplete or skeleton legislation and which actually perform the last step in the legislative process. The War Claims Commission, in contrast, dealt with a statute complete in its policy aspects. The enforcement of such a statute is confided exclusively to the executive branch, and the officers engaged in this task are subject to the President's unlimited removal power.

2. Nor did petitioner exercise any part of the judicial power of the United States. The distinctive element of the judicial power is the determination of actual controversies in proceedings of a traditional judicial nature; it is not simply the determination of legal questions or the adjudication of claims. The latter two functions have been performed habitually by the other two branches. The determination whether a person is entitled to the benefits under a statute or treaty does not constitute the resolution of a contro-

versy; a dispute arises only after a claim has been rejected. Indeed, it has been held that determinations such as those performed by the War Claims Commission are "entirely alien to the legitimate functions of a judge" and have "no analogy" to the general powers of a court. Moreover, the overwhelming majority of the claims presented to the War Claims Commission involved claims against foreign governments based upon the violation of international law. They therefore were not of a justiciable nature, because our courts do not sit in judgment over the acts of a foreign government outside the United States.

3. The determination of claims of American citizens against foreign countries, the principal business of the War Crimes Commission, is of a peculiarly executive nature. An individual has no standing to prosecute a claim against a foreign sovereign except to the extent that his government espouses it. The War Claims Act making alien property funds available for the satisfaction of American claimants against Germany and Japan constituted such an act of diplomatic protection. The determination of individual claims by the War Claims Commission thus constituted an important aspect of the foreign relations power. The latter power is vested in the two political branches—legislative and executive—to the exclusion of the judicial one. And, as between the two political branches, the executive normally has primacy. *E.g., United States* v. *Curtiss-Wright Corp.*, 299 U.S. 304.

Congress has been fully aware of the executive nature of the War Claims Commission. This appears from the circumstance that it was intended to receive a status analogous to that of the Mixed Claims Com-

mission. In addition, some functions comparable to those performed by the War Claims Commission were assigned to an establishment of an unquestionably executive nature (the Federal Security Agency). The circumstance that Congress ratified Reorganization Plan No. 1 of 1954 abolishing the War Claims Commission also indicates that Congress understood the Commission to be of an executive nature, because under the Reorganization Act of 1949 the President's reorganization powers were limited to agencies in the executive branch of the Government.

C

Congress has not limited the President's removal power either expressly or by implication. To the contrary, it is the import of the statutory plan that the President was expected to exercise the removal power.

1. The unmodified judgment in the quo warranto action establishes, under ordinary principle of res judicata and collateral estoppel, that Congress did not limit the President's removal power. This judgment is binding upon petitioner because the real parties in interest are identical in the two cases. The circumstance that petitioner's appeal was dismissed for mootness does not detract from the binding effect of the District Court's judgment in the absence of an order vacating the judgment or dismissing the proceedings. *United States* v. *Munsingwear*, 340 U.S. 36.

2. The War Claims Act did not expressly limit the President's removal power. In *Humphrey*, this Court based the limitation of the President's removal power on the fact that the statute specified certain grounds for dismissal and held that this enumeration was ex-

clusive under the *expressio unius* rule. The War Claims Act does not contain any corresponding provisions. The clause that petitioner's term of office would expire at the time fixed for the winding up of the Commission does not limit the President's removal power. Clauses of that type consistently have been construed as a limitation upon the term of office, not as a grant of irremovability for that period of time.

3. The clear implication of the statutory plan is, not that Congress intended to curtail the President's removal power, but rather that Congress must have contemplated his exercise of that power. The circumstance that a board is set up as a separate agency means merely that its members are not to be the subordinates of a department head—not that they are to be exempt from presidential control. With respect to the Federal Trade Commission, involved in *Humphrey*, the membership of the Commission is bi-partisan in composition, its decisions are subject to judicial review, and the Commissioners are subject to removal by the President for inefficiency, neglect of duty, or malfeasance in office. A holding in this case that the President could not remove petitioner means that an agency such as the War Claims Commission—which was not bi-partisan, whose decisions were not subject to judicial review, which could dispose of a fund amounting to nearly $300,000,000, and whose rulings touch on extremely sensitive areas in the field of foreign relations—would be subject only to the practically unusable impeachment power of Congress. The result would be to invite irresponsibility.

Moreover, it is hardly likely that Congress intended to grant to petitioner a position superior

to that of the members of the Interstate Commerce and Federal Trade Commissions, and the National Labor Relations, Civil Aeronautics, and the Subversive Activities Control Boards, the members of which are removable for cause by the President. In addition, in each of the three statutes enacted after *Humphrey* establishing regulatory commissions, Congress limited the President's removal power in terms. The failure of Congress to do so in enacting the War Claims Act further indicates that no such curtailment was intended.

4. The decision in this case will have no bearing on the tenure of members of the Federal Power, Federal Communications, Securities and Exchange, and Tariff Commissions, as well as the tenure of the District Judges in Hawaii and Puerto Rico.

ARGUMENT

Petitioner, Appointed by the President to the Office of War Claims Commissioner under the War Claims Act of 1948, Was Properly Removed from that Office by Action of the President

As shown below (pp. 22-43), this Court's decisions and a consistent constitutional practice since 1789 confirm the President's unlimited power to remove all officers appointed by him (*Myers* v. *United States*, 272 U. S. 52), subject only to constitutional or statutory restrictions with respect to non-executive officers (*Humphrey's Executor* v. *United States*, 295 U. S. 602). It follows, therefore, that petitioner's removal was proper if, as we shall demonstrate (pp. 43-68), petitioner was an officer in the executive branch of the Government. On the other hand, assuming *arguendo* that petitioner was not an officer in the executive branch,

we shall also demonstrate (pp. 68-81) that in the instant case (unlike *Humphrey, supra*) Congress had not placed any limitations on the President's removal power. Quite the contrary, the statutory plan indicates that Congress must have contemplated the President's exercise of that power (pp. 81-82).

A. Under This Court's Decisions and According to a Consistent Constitutional Practice since 1789, the President Has Unlimited Power to Remove All Officers Appointed by Him, Subject Only to Constitutional or Statutory Restrictions with Respect to Non-executive Officers.

1. *The Constitution and the Decision of 1789*

Article II, Section 2, of the Constitution (*supra*, pp. 2-3) specifies that, unless otherwise provided in the Constitution, the President, by and with the consent and advice of the Senate, has the power to appoint the "Officers of the United States",[36] but the Congress may vest the appointment of inferior officers in the President alone, the courts of law, or in the department heads. There is, however, no corresponding provision relating to the authority to remove officers.

This omission became apparent when, during the early weeks of its first session, the First Congress sought to organize the departments of the newly established government. Then the question arose as to whether the President had, or should be granted, the authority to remove the department heads. Congress determined that, under the Constitution, such authority rested in the President alone. The detailed and searching debates which led to the "Decision of 1789", which constitutes the authentic and virtually contempora-

[36] For the sake of brevity and convenience, we shall use in this brief the term "officer of the United States" as limited to those officers who are appointed by the President, by and with the advice and consent of the Senate, except for judges of constitutional courts.

neous interpretation of the Constitution by the First Congress, composed of many of the members of the Constitutional Convention, have been described often enough.[37] Hence, we need not burden this brief with a detailed exposition of those discussions. It will suffice to mention only the basic considerations, expounded in the three major speeches by James Madison,[38] which caused Congress to conclude that the Constitution vested the power of removal in the President alone.

The epitome of Mr. Madison's arguments is contained in his speech of June 22, 1789 (1 Ann. Cong. 581-582):

> * * * I therefore shall only say, if there is a principle in our Constitution, indeed in any free Constitution, more sacred than another, it is just that which separates the Legislative, Executive, and Judicial powers. If there is any point in which the separation of the Legislative and Executive powers ought to be maintained with greater caution, it is that which relates to officers and offices. The powers relative to offices are partly Legislative and partly Executive. The Legislature creates the office, defines the powers, limits its duration, and annexes a compensation. This done, the Legislative power ceases * * *. We ought always to consider the Constitution with an eye to the principles upon which it was founded. * * * [39]

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[37] See, *e.g.*, *Parsons* v. *United States*, 167 U.S. 324, 328-330; *Myers* v. *United States*, 272 U.S. 52, 111-132.

[38] June 16, 1789 (1 Ann. Cong. 461-465); June 17, 1789 (1 Ann. Cong. 495-501); and June 22, 1789 (1 Ann. Cong. 581-582).

[39] The doctrine of the separation of powers, which underlies so many of the problems of this case, stems in large part from Montesquieu's Discourse on the Constitution of England (*Spirit of Laws*, Book XI, ch. 6). The profound influence of Montesquieu's writings on the Constitutional Convention is well borne out by the fre-

Earlier in the debate Madison had given three specific reasons in support of the thesis that the Constitution had vested the removal power in the President alone, and that he did not share it with the Senate. He relied on the general rule of construction pursuant to which "the power of removal resulted by a natural implication from the power of appointing" (1 Ann. Cong. 496). This, however, does not compel the conclusion that the Senate, which has the power to advise and consent to appointments, has the same authority with respect to removals. For, as Madison pointed out, the participation of the Senate in the appointment of officers of the United States constitutes such an exception to the basic constitutional principle of the separation of powers [40] that it must be construed strictly and may not be extended beyond the very letter of the Constitution by the process of implication (1 Ann. Cong. 462, 463, 496-501).[41]

Apart from his reliance on the canon of construc-

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quent references to him during the discussions. See the index in Farrand, *The Records of the Federal Convention*, 1787 (Rev. Ed. 1937), Vol. IV, p. 183; cf. Sharp, *The Separation of Powers*, 2 U. of Chicago Law Review 385, 419.

[40] For other objections to this participation based on the same considerations, see also Farrand, *ibid.*, Vol. II, pp. 538-539, and 1 Ann. Cong. 557. There are indications that the purpose of the senatorial part in the appointment of officers was less to check on unwise appointments than to insure the appointment of officials from smaller states. Farrand, *ibid.*, Vol. III, p. 99; *Myers* v. *United States*, 272 U.S. 52, 110-111, 119-120.

[41] During the debates in the Senate on the bill, Senator (subsequently Chief Justice) Ellsworth stated that the power to advise and consent was not a part of the power to appoint. According to the diary of John Adams, then presiding over the Senate, Senator Ellsworth said "the President, not the Senate, appoint; they only consent and advise". C. F. Adams, *The Works of John Adams*, Vol. III, p. 409. For another version of that speech, see Bancroft, *History of the Constitution of the United States*, Vol. 2, p. 192; and *Myers* v. *United States*, 272 U.S. 52 at 122-123.

tion that the power to appoint implies the power to remove, Madison expressed two further considerations. He pointed out that, inasmuch as the President had the responsibility for the faithful execution of the laws under Art. II, Section 3, of the Constitution (*supra*, p. 3),[42] he necessarily had to have the authority to remove those officials whom he did not trust (1 Ann. Cong. 462-465, 496-501).[43] Moreover, he referred to the "great principle of unity and responsibility in the Executive department, which was intended for the security of liberty and the public good" (1 Ann. Cong. 499) and warned of the consequences which would result if Government officers defying the President could join "in cabal with the Senate" (1 Ann. Cong. 462), thus preventing their removal and reducing the power of the President "to a mere vapor" (1 Ann. Cong. 462, 497-500).[44]

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[42] The "take care" clause is but a paraphrase of the cardinal executive function to carry the laws into effect. The earlier drafts of the Constitution used language such as "general authority to execute the National laws" (1 Farrand, *ibid.*, 21, 63), "power to carry into effect the national laws" (1 Farrand, *ibid.*, 66-67), "to carry into execution the national laws" (1 Farrand, *ibid.*, 226, 230, 236), "general authority to execute the federal acts" (1 Farrand, *ibid.*, 244), "the execution of all laws passed" (1 Farrand, *ibid.*, 292). One of the drafts in the Committee of Detail read "to attend to the Execution of the Laws of the United States" (II Farrand, *ibid.*, 158). The clause was ultimately reported out of that Committee substantially in its present form (II Farrand, *ibid.*, 185).

[43] Mr. Madison suggested that the wanton removal of a meritorious official might constitute a ground for the impeachment of the President (1 Ann. Cong. 498). He also indicated the President's inability to remove an unreliable officer might have far more serious consequences than his inability to obtain senatorial advice and consent to the appointment of a qualified one (1 Ann. Cong. 496-497). See *Myers* v. *United States*, 272 U.S. 52, 121-122.

[44] Madison also exploded the notion that the several Senators responsible only to the states from which they were elected were better guardians of liberty and freedom than the President who is responsible to the whole community (1 Ann. Cong. 499).

The House of Representatives accepted the arguments of Mr. Madison and of his associates and, by a considerable margin,[45] passed the Act establishing the Department of Foreign Affairs in a form indicating that the power to remove the Secretary of Foreign Affairs was vested in the President by virtue of the Constitution and not by congressional grant.[46] In the Senate, however, a tie required Vice President Adams to cast his vote in favor of the "Decision". It is reported that Adams never had the shadow of a doubt of its soundness.[47]

Nor did Madison ever recede from the Decision of 1789. He reaffirmed it expressly in the Helvidius Letters,[48] thus demonstrating that the President's re-

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[45] 31 to 19 (1 Ann. Cong. 585).

[46] Act of July 27, 1789. Section 2, 1 Stat. 29.

A week later, in connection with the establishment of the Treasury Department, Mr. Madison discussed the office of Comptroller of that department (1 Ann. Cong. 611-614). He felt that this official did not perform purely executive functions but that he ought to be considered "something in the light of an arbitrator between the public and individuals" (1 Ann. Cong. 612), hence, that the properties of his office "partake of a Judiciary quality" (1 Ann. Cong. 611). Madison therefore felt that this type of official should not hold his office at the sole pleasure of the Executive, but that in order to insure his impartiality he should be given such tenure as to be responsible and dependent on the public generally. He therefore proposed that the Comptroller's office should be limited to a term of years. This would not affect the President's removal power; on the other hand, it would give the Senate the opportunity to deny reconfirmation to a Comptroller who permitted the President to interfere with his functions. It will be noted that Mr. Madison did not suggest that the President's removal power be limited, but that it be neutralized by limiting the duration of the term of the Comptroller's office. Mr. Madison's recommendations were not adopted by Congress; the statute organizing the Treasury Department (1 Stat. 65) did not specify a definite term of office for the comptroller.

[47] C. F. Adams, *The Works of John Adams*, Vol. I, p. 450; see also the letter of John Adams to James Lovell, dated September 1, 1789, *ibid.*, Vol. VIII, pp. 493-495.

[48] *Letters and Other Writings of James Madison*, Vol. I, p. 619.

moval power is not based on any notion of inherent executive powers which Madison had repudiated in those letters.[49] And in 1834, when the Decision of 1789 was under attack in the Senate,[50] Madison in his "eighty-fourth year, and with a constitution crippled by disease" [51] rallied to its defense stating:

> The claim, on *constitutional* ground, to a share [of the Senate] in the removal as well as appointment of officers, is in direct opposition to the uniform practice of the Government from its commencement. It is clear that the innovation would not only vary, essentially, the existing balance of power, but expose the Executive, occasionally, to a total inaction, and at all times to delays fatal to the due execution of the laws. [Emphasis in original.] [52]

The removal power was sparingly exercised during the administration of the first six Presidents. The large number of political dismissals by President Jackson, however, placed the problem of the President's removal power again in the public spotlight.[53] It is significant that many of those who opposed President Jackson's actions concluded either that the Decision of 1789 constituted the correct interpretation of the Constitution, or that it could not be challenged any longer after nearly half a century of established

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[49] *Ibid.*, pp. 607-654.

[50] See *Myers* v. *United States*, 272 U.S. 52, 150-151, and *infra*, p. 28.

[51] *Letters and Other Writings of James Madison*, Vol. IV, p. 366.

[52] Letter from James Madison to Edward Coles dated October 15, 1834, *Letters and Other Writings of James Madison*, Vol. IV, pp. 366, 368.

[53] Story, *Commentaries on the Constitution of the United States* (5th ed.), Vol. 2, Section 1543. See 272 U.S. at 149-150.

constitutional practice. *Myers* v. *United States*, 272 U.S. 52, 148-152. In Chancellor Kent's view, "[t]hat the President [Andrew Jackson] grossly abuses the power of removal is manifest";[54] nevertheless, in his Commentaries, he took the position that the issue "may now be considered as firmly and definitely settled, and there is good sense and practical utility in the construction".[55] Mr. Justice Story, too, pointed to the large increase in the number of removals under President Jackson, and, leaving it up to the reader to determine whether the Decision of 1789 constituted "any aberration from the true constitutional exposition of the power of removal", stressed that "it will be difficult, and perhaps impracticable, after forty years' experience, to recall the practice to the correct theory".[56] In 1834 Daniel Webster stated on the floor of the Senate that, although he disapproved of the removal of Secretary of the Treasury Duane, and considered it an abuse of power, "yet the power of removal does exist in the President, according to the *established* construction of the constitution" and, hence, "its exercise cannot be justly said to be an assumption or usurpation" (10 Debates in Congress, 1664, emphasis added).[57]

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[54] Letter from Chancellor Kent to Daniel Webster, dated January 21, 1830. Fletcher Webster, *Private Correspondence of Daniel Webster*, Vol. 1, pp. 486, 487. See 272 U.S. at 148-149.

[55] Kent, *Commentaries*, Vol. 1, p. 310. See 272 U.S. at 149.

[56] Story, *Commentaries on the Constitution of the United States* (5th ed.), Vol. 2, Sections 1543, 1544. See 272 U.S. at 149-150.

[57] The following year, however, Mr. Webster took the position that, although the Decision of 1789 had been established as the "settled construction of the constitution" and that it was the duty of Congress "to act upon the case accordingly, for the present," Congress had the power to regulate "the condition, duration, qualification, and tenure of office, in all cases where the constitution has made no express provision on the subject". 11 Debates in Congress, 470. See 272 U.S. at 150-152.

After the termination of the Jacksonian era, Whig Attorney General Legaré similarly took the position that the question of the President's removal power was no longer *res integra* and that it was too late to dispute the issue settled in 1789 (4 Op. Att. Gen. 1 (1842)). During the following twenty years, this opinion was accepted by his successors regardless of whether they served under a Democrat or a Whig.[58]

Beginning with *Matter of Hennen*, 13 Pet. 230, 259-260, decided in 1839, this Court has accepted the Decision of 1789—*viz.*, that the power of removal was vested in the President alone because the power to remove is an incident of the power of appointment as the "settled usage and practical construction of the constitution * * *". See also *Blake* v. *United States*, 103 U.S. 227, 231-233.

2. *Congress cannot limit the President's power to remove officers in the executive branch of the Government*

a. *Congressional attempts during the Civil War and Reconstruction periods to curtail the President's removal power.*—The Decision of 1789 was concerned directly only with the issue whether the President could remove officers without the advice and consent of the Senate. It did not deal necessarily with the contention made by Daniel Webster[59] that Congress could regulate the duration and tenure of office in all those cases where the Constitution had made no express provision on the subject."

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[58] Attorney General (later Mr. Justice) Clifford, 4 Op. Att. Gen. 603, 608-610 (1847); Attorney General Crittenden, 5 Op. Att. Gen. 288, 290 (1851); Attorney General Cushing, 6 Op. Att. Gen. 4, 6 (1853).

[59] See fn. 57, *supra*.

This latter problem came to the fore during the Civil War and Reconstruction periods, when, beginning with the Currency Act of February 25, 1863, 12 Stat. 665, Congress passed a series of statutes, including the Act of July 12, 1876, 19 Stat. 78, 80, 81, relating to the offices of postmasters of the first, second, and third classes, which required senatorial advice and consent for the removal of certain officers. The most important and famous legislation was the Tenure of Office Act of March 2, 1867, 14 Stat. 430, passed during the disputes between President Johnson and the Congress. Under that statute, all officers appointed by and with the advice and consent of the Senate held office until their successors had qualified in a like manner. Cabinet members were to hold their offices for the term of the President who had appointed them and for one month thereafter, subject to removal by and with the advice of the Senate.

President Johnson vetoed the act on the ground that it conflicted with the well-settled interpretation of the Constitution of the United States.[60] While Congress overrode the veto, the inconsistency of the Tenure of Office Act with the traditional operation of the Constitution was recognized as soon as the split between the President and Congress came to a close with the expiration of President Johnson's term. Congress immediately relaxed the Tenure of Office Act (Act of April 5, 1869, 16 Stat. 6). President Grant's first annual mes-

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[60] Richardson, *Messages and Papers of the Presidents*, Vol. 6, pp. 492, 498. In *Parsons* v. *United States*, 167 U.S. 324, 340, the Court held: "The continued and uninterrupted practice of the Government from 1789 was thus broken in upon and changed by the passage of this act * * *".

sage recommended the complete repeal of the Act on the grounds the framers of the Constitution could not have intended to confer upon the Senate the power to retain anyone in office against the will of the President, that the faithful and efficient administration of the Government could not be maintained if the President had to work with officials in whom he could not confide, and that officials who knew that their superiors did not trust them were not likely to render faithful service.[61]

In spite of the urgings of President Grant, it took nearly 20 years before the Tenure of Office Act, or more specifically R.S. 1767-1772, into which that Act as amended had been codified, was finally repealed (Act of March 3, 1887, 24 Stat. 500). The pertinent committee report (H. Rept. 3539, 49th Cong., 2d Sess.) significantly stated as the reason for the repeal:

> * * * the law will then stand as it stood from the foundation of the Government up to 1867, when, in a time of great party excitement, the said legislation was enacted, which, to say the least, was unusual, and tended to embarrass the President in the exercise of his constitutional prerogative.

The repeal of the Tenure of Office Act and of R.S. 1767-1772 prevented a determination of their constitutionality by this Court. *Parsons* v. *United States*, 167 U.S. 324, 339-341. This Court, however, consistently held that, in the absence of a clear statutory provision to the contrary,[62] the President's power to appoint im-

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[61] Richardson, *Messages and Papers of the Presidents*, Vol. 7, pp. 27, 38. See also 2 Blaine, *Twenty Years of Congress*, 273-274, 449-456.

[62] *Shurtleff* v. *United States*, 189 U.S. 311, 315-316.

plied the power to remove[63] not merely executive officers but also judges of legislative courts. *McAllister* v. *United States*,[64] 141 U.S. 174 (Territorial Court), *Shurtleff* v. *United States*, 189 U.S. 311 (Board of General Appraisers of Merchandise).[65]

b. *The decision in Myers* v. *United States, 272 U.S. 52.*—The question whether Congress could limit the President's removal power was presented to this Court nearly forty years after the abrogation of the Tenure of Office Act in connection with the unrepealed Act of July 12, 1876 (*supra*, p. 30), pursuant to which postmasters of the first to third classes could be discharged by the President only by and with the advice and consent of the Senate. In 1920, one Myers, the Postmaster of Portland, Oregon, was removed from office by direction of the President, who had not obtained senatorial approval of this action. Myers sued for his salary in the Court of Claims, claiming that his removal was ineffective in the absence of the advice and consent of the Senate. The Court of Claims dismissed his petition on the ground of laches. This Court affirmed on the ground that the 1876 Act unconstitutionally attempted

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[63] *United States* v. *Allred*, 155 U.S. 591, 595; *Keim* v. *United States*, 177 U.S. 290, 293-294; *Reagan* v. *United States*, 182 U.S. 419, 426; *Shurtleff* v. *United States*, 189 U.S. 311, 316; *Burnap* v. *United States*, 252 U.S. 512, 515; *Norris* v. *United States*, 257 U.S. 77, 81.

[64] In 1851 Attorney General Crittenden had ruled that the President's removal power extended to territorial judges (5 Op. Att. Gen. 288). This Court, however, did not pass on the merits of the resulting controversy. See *United States ex rel. Goodrich* v. *Guthrie*, 17 How. 284.

[65] The Board of General Appraisers was renamed the "United States Customs Court" without change of its jurisdiction, function or of the status, powers and duties of its members. Act of May 28, 1926, 44 Stat. (Pt. II) 669; see also *Ex parte Bakelite Corp.*, 279 U.S. 438, 458.

to limit the President's power to remove officers appointed by him with the advice and consent of the Senate.

The majority opinion written by Chief Justice Taft[66] carefully re-examined the Decision of 1789, and traced its full acceptance by the executive and the judicial branches throughout the history of the Republic to the very eve of the decision.[67] The opinion showed that the President's power to appoint officers of the United States carries with it the power to remove them and that the Senate's power to advise and consent to appointments does not extend to removals, not only because the participation of that body in the appointment of officers constitutes an exception to the basic constitutional scheme of the separation of powers, but also because the power to remove is an incident of the power to appoint and not of the power to advise and consent (272 U.S. at 122).[68] In addition, the Court held that under the "take care" clause of the Constitution the President is responsible for the faithful execution of the laws and that Congress could not interfere with the President's performance of this duty by curtailing his control over the federal personnel (272 U.S. at 177, 162-164).

The Court pointed out that, where Congress seeks to limit the evils of spoils and patronage in the area of inferior officers, it may do so by the simple method of

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[66] For the share of Mr. Justice Stone in the editing of this opinion, see Mason, *Harlan Fiske Stone: Pillar of the Law*, pp. 222-231.

[67] Cf. President Coolidge's Message of February 13, 1924, 65 Cong. Rec. 2335 (272 U.S. at 170). *Myers* was argued on December 5, 1923, reargued April 13 and 14, 1925, and decided October 25, 1926 (272 U.S. at 52).

[68] Chief Justice Taft thus accepted the argument of his predecessor Ellsworth (*supra*, fn. 41).

vesting the appointment in the President alone or in the department heads (272 U.S. 162, 164). The decision left open the question of whether Congress could control the removal of the judges of legislative courts (272 U.S. at 157-158). It also considered the problem touched upon by Mr. Madison in the discussion of the tenure of the Comptroller of the Treasury, *i.e.*, that of executive officers having adjudicative duties.[69] With respect to such officials, the opinion stated that, while the President could not properly interfere with their decisions, he could consider their rulings as a reason for their removal on the ground that they had not intelligently or wisely exercised their discretion, for otherwise the President "does not discharge his own constitutional duty of seeing that the laws be faithfully executed" (272 U.S. at 135).

There were three dissents. Mr. Justice Holmes felt that the arguments drawn from the doctrine of the separation of powers were "spider's webs inadequate to control the dominant facts," especially the fact of congressional power over the existence and duration of the office involved (272 U.S. at 177).[70] The dissenting opinion of Mr. Justice McReynolds reasoned that, since the Constitution does not in terms confer the removal power on the President, any attempt to derive it by implication from his specifically delegated powers actually relied upon inherent prerogative powers of the executive and accordingly violated the basic theory of the republican form of government (272 U.S. at 178-239).

Mr. Justice Brandeis agreed with the Court's holding

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[69] See fn. 46, *supra*.

[70] Cf. his dissent in *Springer* v. *Philippine Islands*, 277 U.S. 189, 209.

that, in the absence of legislation to the contrary, the President alone has the power to remove officers of the United States (272 U.S. at 241).[71] He felt, however, that the rationale of the Decision of 1789, involving political cabinet members and other high-ranking officers, had no bearing on the President's power over inferior officers such as postmasters. Since the Constitution permitted Congress to place limitations upon the President's removal power by placing their appointment in the department heads, he could not see any reason why Congress could not exempt such officers from the realm of spoils and patronage by making their removal dependent upon senatorial consent. The dissent also sought to demonstrate that the legislation requiring senatorial consent for the dismissal of inferior officers (*supra*, p. 30) actually constituted a forerunner of the merit system and of the civil service legislation (272 U.S. at 240-295).

3. *The President has full power to remove non-executive officers in the absence of constitutional or statutory limitations*

a. *The decision in Humphrey's Executor v. United States, 295 U.S. 602.*—Under the Constitution, the President's power of appointment is not limited to the officers of the executive branch, but extends to all officers of the United States for whose appointment the Constitution does not make any other provision. The rule that the President's removal power is plenary is based on three grounds: the canon of construction that the power to appoint includes the power to remove, the President's duty to take care that the laws be faithfully

[71] Mr. Justice Brandeis was the author of the Court's opinion in *Burnap v. United States*, 252 U.S. 512, *supra*, fn. 63.

executed, and the postulate of executive unity.[72] The latter two considerations, of course, do not support the President's power to remove non-executive officers. As to those, his power to dismiss rests only on the rebuttable canon of construction that the power to appoint includes the power to remove.[73] *Humphrey's Executor* v. *United States*, 295 U.S. 602, addressed itself to that problem.

The members of the Federal Trade Commission are appointed for a term of seven years. They may be removed by the President for inefficiency, neglect of duty, or malfeasance in office (Federal Trade Commission Act, Section 1, 38 Stat. 717, 15 U.S.C. 41). During the early months of his first administration, President F. D. Roosevelt requested Federal Trade Commissioner Humphrey to resign because he felt that the President's and the Commissioner's minds did not "go along together on either the policies or the administering of the Federal Trade Commission" and because the President felt that it would be best if he could have "full confidence" in the Commissioners of the several agencies. *Humphrey's Executor* v. *United States*, 295 U.S. at 619. When Commissioner Hum-

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[72] *Supra*, pp. 24-25. For the great weight placed by Chief Justice Taft on the latter consideration, see, *e.g.*, his letter to Thomas W. Shelton dated November 9, 1926: "I am very strongly convinced that the danger to this country is in the enlargement of the powers of Congress, rather than in the maintenance in full of the executive power. Congress is getting into the habit of forming boards who really exercise executive power, and attempting to make them independent of the President after they have been appointed and confirmed. This merely makes a hydra-headed Executive, and if the terms are lengthened so as to exceed the duration of a particular Executive, a new Executive will find himself stripped of control of important functions, for which as the head of the Government he becomes responsible, but whose action he cannot influence in any way". Mason, *Harlan Fiske Stone: Pillar of the Law*, p. 231.

[73] See *supra*, p. 24.

phrey refused to withdraw, the President removed him from the Commission without assigning any reasons for this action.[74]

The Court held that the President lacked the power to do so. It inferred a congressional intent to render the Commissioners independent of executive authority from the legislative history of the Federal Trade Commission Act, the bi-partisan composition of the Commission, the provision for a definite term of years, and the statutory specification of the grounds for removal.[75] This, the Court concluded, in turn required that the President's removal power had to be limited to the grounds specified in the statute, because a person who holds his office at the pleasure of another cannot maintain an attitude of independence (295 U.S. at 623-626, 629).

The Court next determined that Congress had the power to isolate the Commission from the Executive in spite of the then recently decided *Myers* case. It held that *Myers* could not be considered controlling in view of the essential differences between the offices of a postmaster and that of a Federal Trade Commis-

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[74] In *The Independent Regulatory Commissions*, 52 Political Science Quarterly 1, 7, Professor Lindsay Rogers discloses that President Roosevelt had considered following the statute and specifying causes for Mr. Humphrey's removal. His legal advisers counseled the "gentler course" of removal without cause in the belief that the *Myers* decision authorized such action.

[75] The Court distinguished *Shurtleff* v. *United States*, 189 U.S. 311, which had held with respect to a General Appraiser of Merchandise, a position later renamed Customs Judge (*supra*, fn. 65) that the enumeration of specific grounds of removal does not necessarily prevent dismissal by the President for other causes on the dicta in the *Shurtleff* case that, if the President had no general removal powers, the office of a general appraiser would have life tenure. This argument, of course, does not apply to a Federal Trade Commissioner whose term is limited to seven years. See *supra*, p. 36.

sioner. Myers was an officer performing duties clearly within the executive department and, hence, "subject to the exclusive and illimitable power of removal by the Chief Executive" (295 U.S. at 627). A Federal Trade Commissioner, on the other hand, does not administer the conventional type of statute which gives the officer charged with its enforcement full guidance as to his duties. He has to "carry into effect legislative policies embodied in the statute in accordance with the legislative standard therein prescribed", and the "filling in and administering the details embodied by that general standard" is not in the nature of an executive office but involves quasi-legislative and quasi-judicial functions (295 U.S. at 628).

Moreover, the Federal Trade Commission has the power to make investigations and to report on them to Congress,[76] and to act as master in chancery in certain judicial proceedings instituted by or under the direction of the Attorney General[77] (295 U.S. at 621, 628). The Court held that the Commission acts as an agency of the legislative and judicial departments of the Government to the extent that it exercised the latter two functions (295 U.S. at 628).

The Court concluded that the main duties of the Commissioners were to implement legislative stand-

[76] The Court found that many such investigations had been made and that some had served as the basis of legislation (295 U.S. at 621).

[77] This power has been invoked rarely. Cushman, *The Constitutional Status of the Independent Regulatory Commissions*, 24 Cornell Law Quarterly 163, 185-186.

[78] The duties of the Commission under Section 6(d) to conduct an investigation at the direction of the President were held to be "so obviously collateral to the main design of the act as not to detract from the force of this general statement as to the character of that body." 295 U.S. at 628, footnote.

ards and to act as agents to the legislative and judicial department, that consequently they did not exercise any part of the executive power vested in the President, that their functions were of a quasi-judicial and quasi-legislative character, and that in those circumstances the rationale of the *Myers* decision—which prevents Congress from limiting the President's control over "purely executive" officers—was inapplicable. Congress thus had the power to restrict the President's removal power over officers who occupy positions similar to those of a Federal Trade Commissioner.[79]

The result of the decision is that the scope of the President's removal power depends on the "character" of the office. The power is illimitable as to officers who perform executive functions; as to those who have a status similar to that in *Humphrey*, Congress may circumscribe the President's removal authority (295 U.S. at 631-632).[80]

b. *The President's power to remove non-executive officers does not require congressional authorization.*—The main thrust of petitioner's brief is the proposition that the President has only such power to remove non-

[79] The Court was influenced by the consideration that, if the President's power to remove the members of the regulatory commissions was illimitable, the members of the Court of Claims, by the same token, would serve at the President's pleasure (295 U.S. at 629). See, however, the express reservation in *Myers* with respect to the judges of legislative courts (*supra*, p. 34). The Court had held only two years earlier that Congress had the power to reduce the salaries of the judges of that legislative court. *Williams* v. *United States*, 289 U.S. 553.

[80] This Court has denied review of decisions of the Court of Appeals and of the Court of Claims based on this distinction. See *Morgan* v. *Tennessee Valley Authority*, 115 F. 2d 990 (C.A. 6), certiorari denied, 312 U.S. 701; *Farley* v. *United States*, 134 C. Cls. 672, certiorari denied, 352 U.S. 891. See also *Bailey* v. *Richardson*, 182 F. 2d 46; 55 (C.A.D.C.), affirmed by an equally divided Court, 341 U.S. 918; *Carey* v. *United States*, 132 C. Cls. 397.

executive officers as has been conferred upon him by Congress.[81] Such thesis is not supported by any ruling of this Court. It seeks to overthrow a constitutional practice which a century and a quarter ago Chancellor Kent, Mr. Justice Story, and Senator Daniel Webster considered too well established to be open to re-examination.[82]

Petitioner's theory that in the absence of statutory authorization the President has no power to remove non-executive officers is professedly based on the doctrine of the separation of powers, *i.e.*, that the executive department shall not intrude into the affairs of the other two branches. The Constitution through its system of checks and balances, however, has entrusted the President with the authority to appoint *all* officers of the United States for whom the Constitution has not provided otherwise, not only those of the executive branch. The President thus has the power to select most non-executive officers; removal authority stems from the same constitutional plan and is no more incongruous than his unquestionable power to appoint.

The Great Debate of 1789 shows clearly that the Founding Fathers were well aware of the canon of construction that the power to appoint implies the power to remove (1 Ann. Cong. 491, 496, *supra*, p. 24).[83] The Decision of 1789 rested upon it to a large extent (*supra*, p. 24). By the time of

[81] We assume that petitioner stresses this point so heavily because he recognizes that Congress has not sought to curtail the President's power to remove the members of the War Claims Commission. See *infra*, pp. 72-82.

[82] *Supra*, pp. 27-28.

[83] We have shown, *supra*, pp. 24, 33, that the Senate's functions to advise and consent do not constitute a part of the power to appoint.

President Jackson, the political branches of the Government had fully accepted that Decision, and even during the disputes of the reconstruction era it was recognized that the President's power to appoint entailed the power to remove unless Congress provided to the contrary (*supra*, pp. 30-31). The 1839 decision in *Matter of Hennen*, 13 Pet. 230, 259, accepted the Decision of 1789. This ruling has been followed consistently, ordinarily using the formula that the power to remove is, in the absence of a statutory provision to the contrary, an incident of the power to appoint. *Blake* v. *United States*, 103 U.S. 227, 231; *United States* v. *Allred*, 155 U.S. 591; *Keim* v. *United States*, 177 U.S. 290, 293-294; *Reagan* v. *United States*, 182 U.S. 419, 426; *Shurtleff* v. *United States*, 189 U.S. 311, 316; *Burnap* v. *United States*, 252 U.S. 512, 515; *Norris* v. *United States*, 257 U.S. 77, 81; *Myers* v. *United States*, 272 U.S. 52, 119; *Hargett* v. *Summerfield*, 243 F. 2d 29, 31 (C.A.D.C.), certiorari denied, 353 U.S. 970.

This Court has explicitly upheld the removal of non-executive officers by the President in the absence of statutory authorization. *McAllister* v. *United States*, 141 U.S. 174 (territorial judge)[84]; *Shurtleff* v. *United States*, 189 U.S. 311 (member of board which subsequently was renamed United States Customs Court, *supra*, fn. 65).[85]

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[84] While the opinion seems to rely on the suspension provisions of the Tenure of Office Act, R.S. 1768 (141 U.S. 174, 186-190), this Court pointed out in *Parsons* v. *United States*, 167 U.S. 324, 339-343, that the Tenure of Office Act constituted a limitation on the President's power of removal or suspension, not a source thereof.

[85] *United States ex rel. Goodrich* v. *Guthrie*, 17 How. 284, involved the removal of a territorial judge. The court denied mandamus to the judge because his right to the office was anything but clear. See

Contrary to petitioner's arguments, the *Humphrey* decision (*supra*, pp. 35-39) does not constitute a departure from this unbroken line of constitutional practice. *Humphrey* leaves unaffected the rule that the President's power to appoint non-executive officers implies his power to remove them. It merely concludes that Congress has the power to limit the President's authority to remove non-executive officers because the inference to be drawn from the President's functions under the "take care" clause and from the postulate of executive unity does not extend to them. The stress placed by this Court on demonstrating that Congress had clearly limited the President's removal power, carefully distinguishing but not overruling *Shurtleff* v. *United States*, 189 U.S. 311, shows that there was no intent to abandon the rule, then of 146 years standing, that the power to appoint normally implies the power to remove. Had that been the import of *Humphrey*, as suggested by petitioner, it would have sufficed to demonstrate that Humphrey had not been an executive officer and that Congress had not authorized the President to remove him. Under the *Humphrey* decision, the President does not require any statutory authorization in order to remove a non-executive officer; he has that power, unless Congress restricts it.[86]

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the pertinent opinion of Attorney General Crittenden, 5 Op. Att. Gen. 288, 291, ruling that the President had the power to remove a territorial judge but that in view of the nature of that office "caution and circumspection should be used".

[86] Donovan & Irvine, *The President's Power to Remove Members of Administrative Agencies*, 21 Cornell Law Quarterly 215, 248 (it may be noted that the authors of this article were Humphrey's counsel in this Court); Cushman, *The Constitutional Status of the Independent Regulatory Commissions*, 24 Cornell Law Quarterly 13, and 163, 197.

There thus exists a constitutional custom recognized by this Court, and going back to the very year in which the Constitution became effective, establishing that, in the absence of a statutory provision to the contrary, the President may remove any non-executive officer of the United States appointed by and with the advice and consent of the Senate, excepting judges of the constitutional courts. Such constitutional usage is entitled to the greatest respect and may be overturned only upon a conviction that it is clearly incompatible with the supreme law of the land. *Ex parte Quirin*, 317 U.S. 1, 41, 42; *Inland Waterways Corp.* v. *Young*, 309 U.S. 517, 525; *United States* v. *Midwest Oil Co.*, 236 U.S. 459, 473; *Field* v. *Clark*, 143 U.S. 640, 691.

B. Petitioner Was an Executive Officer Subject to the Unlimited Removal Power of the President

In the preceding portion of the brief, we have outlined the law governing the President's removal power. We have shown that, in view of the President's duties to take care that the laws be faithfully executed and of the postulate of executive unity, the President's power to remove executive officers is not subject to congressional control and that the President's power to appoint non-executive officers carries with it the authority to remove them in the absence of congressional provisions to the contrary. In this portion of the brief (pp. 43-68), we shall show that petitioner was an executive officer and that hence the President's removal power was illimitable. Then, in the concluding portion of our brief (pp. 68-82), we shall demonstrate, assuming *arguendo* that petitioner was not an executive officer, that his removal was nevertheless proper.

Our position that petitioner's duties were of an executive character—opposed to that of the Court of Claims (R. 14-17)[87]—is based on three considerations. First, petitioner administered a "complete" statute; he did not engage in the formulation of general standards, or act as an agent of the legislature or the judiciary. Second, the determination whether a claimant is entitled to benefits under a statute or a treaty does not necessarily constitute the determination of actual cases or controversies—the criterion of the judicial power under the Constitution. Third, the functions of the War Claims Commission were to determine the claims, based upon the violation of international law, of American citizens and nationals against foreign countries; this task constitutes an aspect of the foreign relations power which is of a preeminently executive nature.

1. *The War Claims Commission was not an arm of Congress.*

a. *The rationale of Humphrey is inapplicable to non-regulatory agencies.*—According to *Humphrey's Executor* v. *United States*, 295 U.S. 602, the availability of the President's unlimited removal power depends on the "character" of the office involved, *viz.*, whether it is executive in nature, or similar to that held by Humphrey. We shall demonstrate here that petitioner's office differed from that of a Federal Trade Commissioner in at least one crucial aspect: petitioner had to enforce a statute which gave him full guidance. Humphrey, on the other hand, had to administer a statute which contained

[87] The Government may of course seek to support the judgment below on alternative grounds advanced below. See *United States* v. *American Ry. Express Co.*, 265 U.S. 425, 435; *Langnes* v. *Green*, 282 U.S. 531, 538-539; *Jaffke* v. *Dunham*, 352 U.S. 280, 281.

broad standards and left it to the Federal Trade Commission to fill in and to implement those standards.

The decision of this Court in *Myers* was based on the postulate of the separation of powers, *viz.*, that Congress may not interfere with the President's constitutional function to "take care that the laws be faithfully executed". The *Humphrey* decision does not reject the principle of separation; to the contrary, it professes to reaffirm it (295 U.S. at 629-630), but uses it as an argument for the proposition that the President's removal power is not unlimited with respect to an official "who occupies no place in the executive department and who exercises no part of the executive power vested by the Constitution in the President" (295 U.S. at 628). According to the Court, Humphrey was a member of "a commission, which is not only wholly disconnected from the executive department, but which * * * was created by Congress as a means of carrying into operation legislative and judicial powers, and as an agency of the legislative and judicial departments" (295 U.S. 630). Cf. *Springer* v. *Philippine Islands*, 277 U.S. 189.

Humphrey thus is based on the peculiarities of the statutes which, mainly resting on the commerce power, establish so-called independent regulatory commissions. The special nature of this type of legislation has been penetratingly analyzed in Mr. Justice Jackson's discussion in *Federal Trade Commission* v. *Ruberoid Co.*, 343 U.S. 470, 483-489 (dissenting opinion),[88] of "the fundamental principles which determine the position of

[88] This portion of Mr. Jackson's opinion, it should be noted, does not represent any departure from the views of the majority in the *Ruberoid* case.

the administrative process in our system".[89] In the complex area of the regulation of modern business, Congress cannot spell out every detail and make every choice of policy (343 U.S. at 484, 486). It therefore enacts incomplete or skeleton legislation, which requires the intervention of an administrative body to reduce the conflicting abstract policies to concrete regulation (343 U.S. at 485-487). This particular type of administrative activity, *i.e.*, the completion and perfection of the legislative process by implementing and particularizing the policies and standards of a regulatory statute, does not constitute the execution of the laws in the constitutional sense. It actually involves the delegation of the last step of the legislative function to the regulatory agency; and it would appear appropriate that Congress, if it so chooses, may exempt such agency from exclusive executive control. On the other hand, the administration of a "literal" statute which is "complete in policy aspects and ready to be executed as law" constitutes an executive function "confided exclusively to the President and * * * subject to his control" (343 U.S. at 488).

The War Claims Act, as we shall next show, fell into the latter category.

b. *The duties of the War Claims Commissioners did not include the formulation of general policies.*—The awards of the War Claims Commission were not part

[89] Cf. *Chicago & Southern Air Lines* v. *Waterman S.S. Corp.*, 333 U.S. 103, 108-109. Humphrey's own counsel recognized that most administrative agencies and commissions are of an executive nature and that the scope of *Humphrey's Executor* v. *United States*, *supra*, is limited to the regulatory commissions. Donovan & Irvine, *The President's Power to Remove Members of Administrative Agencies*, 21 Cornell Law Quarterly 215, 241-247.

of a program of control or regulation. Instead, the Commission only determined whether certain individuals were entitled to the benefits provided for them by the War Claims Act of 1948.[90] The statute provided all the necessary standards; it was in this sense self-executing. The members of the Commission did not have to "exercise a grant of unexpended legislative power to weigh what the legislature wants weighed, to reduce conflicting abstracting policies to a concrete net remainder of duty or right" (343 U.S. at 487).

The principal duties of the Commissioners were set forth in Sections 5 to 8 of the Act (Stat. App. 76-85). Under Section 5 (Stat. App. 76-79), the Commission was to award to certain civilian internees or to their survivors detention benefits at the rate of $60 for each calendar month of internment and compensation benefits on the basis of a weekly wage of $37.50. The provisions of this section are minutely detailed and do not require any elaboration.

Under Section 6, as originally enacted (Stat. App. 80), prisoners of war (or their survivors) were to receive $1 a day for every day on which an enemy government failed "to furnish him the quantity or quality of food to which he was entitled as a prisoner of war under the terms of the Geneva Convention of July 27,

[90] The Court of Appeals for the District of Columbia Circuit so held recently with respect to the functions of the successor to the War Claims Commission, the Foreign Claims Settlement Commission. *American & European Agencies, Inc.* v. *Gillilland*, C.A. D.C. No. 13447, decided June 27, 1957, slip opinion, p. 5, pending on petition for a writ of certiorari, No. 502, this Term. For the distinctions between regulatory agencies and those conferring benefits, see also Chamberlain, Dowling, Hays, *The Judicial Function in Federal Administrative Agencies*, pp. 2-7, 8; *Final Report of the Attorney General's Committee on Administrative Procedure* (1941), p. 263.

1929", relating to the Treatment of Prisoners of War (47 Stat., Pt. II, 2021). The standard established by Article 11 of that Convention (47 Stat., Pt. II, 2034) is explicit. It provides that "The food ration of prisoners of war shall be equal in quantity and quality to that of troops at base camps." The application of that rule, as evidenced by War Claims Commission Decisions Nos. 2 and 4,[91] was simple and did not involve the "filling in and administering the details embodied by * * * [a] general standard" (*Humphrey's Executor v. United States*, 295 U.S. 602, 628).

In 1952 (*i.e.*, after petitioner had been in office for nearly two years), Congress (*supra*, p. 12) enlarged the jurisdiction of the Commission under Section 6 to pass on claims of prisoners of war based upon violation of Title III, Section III, of the Geneva Convention relating to the labor of prisoners of war (47 Stat., Pt. II, 2041) and upon "inhumane" treatment defined as including but not limited to the violation of Arts. 2, 3, 7, 10, 12, 13, 21, 22, 54, 56, or 57 of the Geneva Convention (47 Stat., Pt. II, 2031, 2032, 2034-2035, 2037-2038, 2049, 2050). Title III, Section III, of the Geneva Convention (Arts. 31 and 32) establishes precisely the types of labor to which prisoners of war may not be subjected, and the term "inhumane" treatment has been defined in the Act so well by the reference to the various provisions of the Convention that little, if anything, was left to the Commission to elaborate further on that term.

Under Section 7 (Stat. App. 83-84), as originally enacted, religious organizations were to be reimbursed for "expenditures incurred or for payment of the fair

[91] *Settlement of Claims*, *supra*, fn. 26, pp. 425, 429.

value of supplies used, by such organization * * * for the purpose of furnishing shelter, food, clothing, hospitalization, medicines and medical services, and other relief in the Philippines to members of the armed forces of the United States or to civilian American citizens * * *." The Act of April 9, 1952, 66 Stat. 47, enlarged the scope of this section by providing that such organizations also should be compensated for the loss and damage sustained as the result of the war to its property and facilities connected with its educational, medical, or welfare work. Here again, Congress had fully expended its legislative power. Nothing was left to the Commission but to execute the law; there was no need for it to exercise legislative discretion as to policy in completing and perfecting the legislative process.[92]

Section 8 of the Act (Stat. App. 84-85) charged the Commission with the duty of reporting to Congress on the advisability of further war claims legislation by March 31, 1950 (*supra*, p. 11). In preparing and submitting this report, the Commission may have acted as an agent of Congress. However, it will be noted that this statutory duty was performed and terminated in

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[92] Petitioner (Pet. Br. 13) argues that Section 7 constitutes "skeleton legislation" because it utilizes concepts such as "fair value of supplies" and "fair and equitable postwar replacement costs." Actually, however, Section 7(d) provides that in the determination of the fair equitable post war replacement value the Commission "shall utilize but not be limited to the factual information and evidence contained in the records of the Philippine War Damage Commission; the technical advice of experts in the field; the substantiating evidence submitted by the claimants and any other technical and legal means * * *". The basic considerations governing the Commission's action, are thus set forth in the statute itself. In any event, the functions of the Commission under Section 7 constituted so small a segment of its entire operations that they cannot be utilized to determine its general character. See fn. 94, *infra*.

March 1950, *i.e.*, several months before petitioner took office. The Commission, it is true, submitted a supplemental report in January 1953. This second report, however, was not prepared pursuant to a statutory duty. In this respect, the Commissioners acted as volunteers.[93]

The War Claims Commission thus was not a regulatory agency; its primary function was executive, *i.e.*, to carry into effect a well defined statute, not to exercise any unexpended legislative power; and it ceased being an agent of Congress, if it ever had been one, once it had submitted the report required to be prepared pursuant to Section 8.[94]

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[93] The Court of Claims also alluded to the circumstance that the Commission submitted the conventional periodical reports on its activities directly to Congress (R. 17.) We submit that this factor is not of sufficient weight to detract from the force to be given to the general function of the Commission. *Humphrey's Executor* v. *United States*, 295 U.S. 602, 628, footnote; *Morgan* v. *Tennessee Valley Authority*, 115 F. 2d 990, 993 (C.A. 6), certiorari denied, 312 U.S. 701; cf. *supra*, fn. 78.

[94] The Court of Claims also suggested that the Commission might be considered "an agent of Congress in discharge of the congressional obligation 'to pay the Debts of the United States' " (R. 15). However, the internee and prisoner of war claims were not claims against the United States but against foreign governments, and the determination and collection of such claims lies peculiarly within the executive branch (*infra*, pp. 59-65). The claim of the religious organizations constituted only 10,278 of the nearly 500,000 claims filed with the War Claims Commission, *i.e.*, about 2 per centum (War Claims Commission, Ninth Semi-annual Report, p. 6, Table 1). Thus they cannot detract from the general character of the functions of the Commission. See fn. 93, *supra*.

2. *The War Claims Commission did not exercise any power of the judicial branch*

The court below took the position that the determination of claims, the preponderant business of the War Claims Commission, was "wholly judicial" in character (R. 16). While the court recognized that such duties are frequently conferred on executive agencies, their performance of such duties was, in the court's view, merely "incidental or ancillary to the discharge of their executive duties" (R. 16).[95]

We shall show that the determination of claims constitutes by no means a judicial monopoly. To the contrary, the judicial power of the United States does not normally extend to the preliminary determination of whether a person has a claim to benefits under a statute, and Congress persistently has allocated this task to administrative agencies.

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[95] In so holding, the court (R. 15) attached significance to the subpoena power held by the War Claims Commission. However, when Congress conferred this power upon the Commission by the Act of August 16, 1950 (64 Stat. 449), *i.e.*, some two months after petitioner had taken office (*supra*, p. 42), it was fully aware of the circumstance that a similar power was held by purely executive officers such as the Veterans Administration and the Civil Service Commission (cf. S. Rep. 1892, 81st Cong., 2d Sess.). Subpoena powers have been granted freely to cabinet officers and to agencies clearly within the executive branch of the Government. *E.g.*, Attorney General and any immigration officer, Immigration and Nationality Act of 1952, Section 235, 66 Stat. 198, 8 U.S.C. 1225; Secretary of Agriculture, 7 U.S.C. 499m, 511n, 1603; Secretary of the Army, Act of August 21, 1935, Section 4, 49 Stat. 671, 33 U.S.C. 506; Secretary of the Treasury, Act of July 18, 1956, Section 302, 70 Stat. 575, 21 U.S.C. 198; Secretary of Labor and Wage and Hours Administrator, Fair Labor Standards Act, Section 9, 52 Stat. 1065, 29 U.S.C. 209; Administrator of Veterans Affairs, 38 U.S.C. 11a, 131, 445, 696(j); Civil Service Commission, 5 U.S.C. (Supp. IV) 632, 118k(d); Railway Retirement Board (an "independent agency in the Executive Branch"), 45 U.S.C. 228j, 362(a).

The distinctive function of the judicial branch of the Government under Article III of the Constitution (*supra*, pp. 3-4) is the determination of concrete cases and controversies[96]—not merely the interpretation of the law or the determination of questions of law and fact. The latter two functions are exercised constantly by the other two branches. This has been recognized from the earliest days of the Republic.

During the debates preceding the Decision of 1789 (*supra*, pp. 22-26), James Madison denied that the power to interpret the Constitution was limited to the judiciary and upheld the authority of Congress to do the same (1 Ann. Cong. 500, 501). Conversely, when in 1793 the President asked the Supreme Court for advice on the interpretation of the Constitution, treaties, and the law of nature and nations in connection with the country's relations with France, this Court refused to comply with this request, pointing out that under the Constitution the President had the authority to call on the heads of the departments for their opinions.[97]

We have already shown that Madison realized that some officers of the executive branch, such as the Comptroller of the Treasury, would be called upon to adjudicate claims. Madison urged that, in order to insure their impartiality, such officers should be subject not merely to the President's removal power, but also to senatorial control by the device of giving them a limited term of years so that the Senate could examine

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[96] This coincides with Montesquieu's definition of the judicial power as providing for the punishment of criminals and the determination of the disputes that arise between individuals. See *supra*, fn. 39.

[97] *Correspondence and Public Papers of John Jay*, Vol. 3, 486-489; see also *The Writings of George Washington* (Sparks Ed., 1836), Vol. 10, pp. 359, 542-545.

their conduct in office whenever they would come up for reconfirmation (1 Ann. Cong. 611-614). See *supra*, p. 26, fn. 46.

The statutory benefits accorded to veterans are a typical instance of claims which can be determined only after an inquiry into questions of law and fact. Still their adjudication has been entrusted to the executive since the very first Congress (1 Stat. 95). The second Congress, it is true, provided that the evidence in such cases should be taken before judges. It felt, however, that the disposition of such claims was not a judicial function and directed that the evidence be reviewed by the Secretary of War and transmitted to Congress for final determination (Act of February 28, 1793, 1 Stat. 324-325).[98] Significantly, the rule that the courts have no jurisdiction in mandamus proceedings to reexamine a reasonable interpretation of a statute performed by an officer as part of his official duties was first formulated in connection with the rejection of a pension claim. *Decatur* v. *Paulding*, 14 Pet. 497, 515.

Murray's Lessee, et al., v. *Hoboken Land and Improvement Co.*, 18 How. 272, explains that many administrative officials determine questions of law and fact but that this by itself does not constitute the exercise of judicial power. The Court said (at p. 280):

> That the auditing of the accounts of a receiver of public moneys may be, in an enlarged sense, a judicial act, must be admitted. So are all those admin-

[98] On the constitutional flaws of a statutory plan which subjects judicial action to executive and legislative review, see *Hayburn's Case*, 2 Dall. 409; *United States* v. *Ferreira*, 13 How. 40, 49-50; *Gordon* v. *United States*, 117 U.S. 697; *Chicago & Southern Air Lines* v. *Waterman S.S. Corp.*, 333 U.S. 103, 113-114.

> istrative duties the performance of which involves an inquiry into the existence of facts and the application to them of rules of law. In this sense, the act of the President in calling out the militia under the act of 1795, 12 Wheat. 19, or of a commissioner who makes a certificate for the extradition of a criminal under a treaty, is judicial. But it is not sufficient to bring such matters under the judicial power, that they involve the exercise of judgment upon law and fact. *United States* v. *Ferreira*, 13 How. 40. It is necessary to go further, and show not only that the adjustment of balances due from accounting offices may be, but from their nature must be, controversies to which the United States is a party, within the meaning of the second section of the third article of the constitution.[99]

Congress itself, of course, has exercised adjudicatory functions from the very beginning in connection with private legislation.

The distinctive function of the judicial branch thus is not the adjudication of questions of fact and law, nor the interpretation of law. It is, under the Constitution, the determination of a concrete case or controversy in adversary conventional judicial proceedings. *Tutun* v. *United States*, 270 U.S. 568, 576-577; *Muskrat* v. *United States*, 249 U.S. 346, 356-360; see also *United Public Workers* v. *Mitchell*, 330 U.S. 75, 90. Insofar as the judicial power is concerned, therefore, the scope of the *Humphrey* decision is limited to tribunals which, although they may be established under provisions other than Article III of the Constitution, perform functions like those of Article III courts—*i.e.*, to the various

[99] Cf. *Lamar* v. *United States*, 128 Fed. 826, 830 (C.A. 8).

legislative courts, such as the territorial courts (see 295 U.S. at 629).

The characteristic functions of the War Claims Commission—the determination whether claimants were entitled to benefits under the War Claims Act—were not of this nature. Indeed, as we shall see (*infra*, p. 58), they have been described as "entirely alien to the legitimate functions of a judge".

a. *The War Claims Commission did not determine controversies in adversary proceedings.*—There is an essential difference between the submission of a claim to an administrative agency for the determination of whether the claimant is entitled to benefits under a statute or a treaty [100] and the filing of a complaint in court. The latter is indicative of a controversy, of the denial of a claimed right. The former constitutes a demand, the normal expectation being that the agency will honor the request, and that it never will develop into a controversy.[101]

The typical function of an administrative agency conferring benefits thus lies in the pre-controversy stage. A controversy possibly subject to judicial determination arises only in those instances in which the agency denies a claim.[102] Such instances were rela-

[100] See *supra*, p. 47. See also *Final Report of the Attorney General's Committee on Administrative Procedure* (1941), p. 263.

[101] *Final Report of the Attorney General's Committee on Administrative Procedure* (1941), p. 35.

[102] On the question of whether and to what extent a claimant is entitled to a judicial remedy upon the rejection of his claim, see *Babcock* v. *United States*, 250 U.S. 328, 331; *Tutun* v. *United States*, 270 U.S. 568, 576; *Lynch* v. *United States*, 292 U.S. 571, 582. Cf. *Z. & F. Assets Corp.* v. *Hull*, 311 U.S. 470; *American & European Agencies, Inc.* v. *Gilliland*, decided June 27, 1957 (C.A.D.C., No. 13447, slip opinion, p. 5, pending on petition for a writ of certiorari, No. 502, this Term).

tively rare in the history of the War Claims Commission. The last report published by the Commission discloses that only about 2.5 per centum of the claimants availed themselves of the administrative appeal procedure open to those whose claims had been denied in full or in part [103] (War Claims Act Section 11, Stat. App. 85-86). The filing of a claim thus is not indicative of an existing controversy, nor does it justify the inference that one is likely to occur in the future.

United States v. *Ferreira*, 13 How. 40, is the leading case clarifying the essential difference between the filing of a claim for benefits and the institution of judicial proceedings. In the Treaty of 1819 by which Spain ceded Florida to the United States, the latter agreed to compensate Spanish officers and inhabitants for injuries suffered by them as the result of the operation of the American Army in Florida. In 1849, Congress authorized the district judge for the Northern District of Florida to receive and adjudicate certain of the claims arising under the Treaty of 1819. The Government took an appeal to this Court from an award in favor of one Ferreira. The appeal was dismissed for lack of jurisdiction on the ground that the district judge did not act in a judicial capacity when he entertained Ferreira's claim.

The decision rested on two grounds. The first was based on the consideration that the district judge's award was subject to review by the Secretary of the Treasury, and that constitutional judges may not render decisions subject to the review or alteration by ad-

[103] As of March 13, 1954, a total of 497,849 claims had been received, and 12,691 appeals were filed. War Claims Commission, Ninth Semi-annual Report, pp. 6, 8.

ministrative action.[104] The other one, pertinent here, rested on the recognition that the proceedings, being typical claims proceedings (13 How. at 47-48), were not of a judicial nature:

The Court excepted to the absence of a suit, of "parties in the legal acceptance of the term", and of process (13 How. at 46); in other words, of the lack of conventional adversary proceedings. The Court, speaking through Chief Justice Taney, continued:

> * * * and no one is authorized to appear on behalf of the United States, or to summon witnesses in the case. The proceeding is altogether *ex parte*; and all that the judge is required to do is to receive the claim when the party presents it, and to adjust it upon such evidence as he may have before him, or be able himself to obtain * * *.

and again (at p. 49):

> The claimant had nothing to do, but to present his claim to the judge with vouchers and evidence to support it. The District Attorney had no right to enter an appearance for the United States, so as to make them a party to the proceedings * * *.

The Court stressed that, while the power conferred upon the district judge and the Secretary of the Treasury might be called judicial in the colloquial sense because it involved judgment and discretion, it was the very kind of authority commonly conferred upon commissioners and executive officers. It was, however, not judicial "in the sense in which judicial power is

[104] 13 How. 49-51. See also *Hayburn's Case*, 2 Dallas 409; *Gordon v. United States*, 117 U.S. 697; *Chicago & Southern Air Lines v. Waterman S.S. Corp.*, 333 U.S. 103, 113-114.

granted by the Constitution to the courts of the United States" (p. 48).

The Court further stated (p. 51):

> [t]he *duties to be performed are entirely alien* to the *legitimate functions of a judge* or court of justice, *and have no analogy* to the general or special powers ordinarily conferred on judges or courts to secure the due administration of the laws * * *. (Emphasis added.)

In the Court's view, the function of determining such claims could have been assigned only to an officer of the United States appointed by the President by and with the advice and consent of the Senate, and Congress could not by law designate the person to fill the office.

Chief Justice Taney's analysis of the nature of the function of claims commissioners is directly in point here. We submit that petitioner—like the court in *Ferreira*—did not perform any judicial or even quasi-judicial functions, but that his duties were "entirely alien" and had "no analogy" to any legitimate judicial function.

b. *The issues before the War Claims Commission were not of a justiciable nature.*—We have shown that the determination of whether or not a person is entitled to benefits under a statute or a treaty is not normally a judicial function. Moreover, the vast majority of the claims presented to the Commission were not of a justiciable character.

Nearly 98% of the Commission's business consisted of claims based upon the violation of international law by foreign countries outside the boundaries of the

United States.[105] It is, however, well established that "the courts of one country will not sit in judgment on the acts of the government of another done within its own territory": *Underhill* v. *Hernandez*, 168 U.S. 250, 252. This ruling has been confirmed in a continuous line of decisions. *American Banana Co.* v. *United Fruit Co.*, 213 U.S. 347, 357-358; *Oetjen* v. *Central Leather Co.*, 246 U.S. 297, 302-303; *Ricaud* v. *American Metal Co.*, 246 U.S. 304, 309; *Shapleigh* v. *Mier*, 299 U.S. 468, 471; *United States* v. *Belmont*, 301 U.S. 324, 327; *Chicago & Southern Air Lines* v. *Waterman S.S. Corp.*, 333 U.S. 103, 111; *Bernstein* v. *Van Heyghen Frères Société Anonyme*, 163 F. 2d 246, 248-249 (C.A. 2), certiorari denied, 332 U.S. 772.[106] See also *Z. & F. Assets Corp.* v. *Hall*, 311 U.S. 470, 490-493 (concurring opinion of Justices Black and Douglas). Nearly 98% of the Commission's business, therefore, consisted of claims which could not be adjudicated by the courts and which for all practical purposes would have been remediless in the absence of the War Claims Act.

3. *The War Claims Commission performed purely executive functions*

The War Claims Commission had jurisdiction over two basic classes of claims—claims of American internees and prisoners of war based on the violation of

[105] See *supra*, p. 91.

[106] The *Underhill decision* (168 U.S. at 252) points out that the lack of a judicial remedy does not leave the citizen helpless. He may obtain redress "through the means open to be availed of by sovereign powers as between themselves". See also *Shapleigh* v. *Mier*, 299 U.S. 468, 471, pointing to the availability of an International Claims Commission. This remedy, however, is executive, not judicial, in nature. See *infra*, pp. 62-65.

international law by the Axis powers, and claims of certain religious organizations. Only the latter constituted claims against the United States, and since these demands were based largely on considerations of equity and gratitude,[107] the United States was under no obligation to provide a judicial remedy.[108] Moreover, the claims of the religious organizations represented only a little more than 2 per centum of the business of the War Claims Commission.[109] The Commission thus derived its "true character" from the function around which nearly 98% of its activities centered,[110] *i.e.*, the determination of claims of American civilians and soldiers against foreign countries based on the violation of international law.

a. *The functions of the War Claims Commission related to the foreign relations power.*—As just noted, the claims presented to the War Claims Commission were not based upon acts of the United States, but rather were based upon the violation of international law by enemy governments.[111] However, since "[n]o nation treats with a citizen of another nation except

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[107] If these organizations had had claims of a legal nature, they could have obtained relief before the Army Claims Service or in the Court of Claims. Cf. *Soriano* v. *United States*, 352 U.S. 270.

[108] See *Lynch* v. *United States*, 292 U.S. 571, 582, and the authorities there cited. Indeed, in view of the gratuitous nature of these claims, judicial tribunals would have found it impossible to find any legal rights or legal obligations which they could enforce. Cf. the argument of Representative Lea at 94 Cong. Rec. 567.

[109] See *supra*, fn. 94.

[110] *Humphrey's Executor* v. *United States*, 295 U.S. 602, 628, footnote.

[111] 94 Cong. Rec. 8752; see 95 Cong. Rec. 8840, relating to the closely related International Claims Settlement Act (Stat. App. 93ff). See also H. Rept. 1632, 82d Cong., 2d Sess., explaining the 1952 Amendment of the Act (*supra*, p. 49).

through his government,"[112] no individual claimant has standing to prosecute such claims except to the extent that his own government "assumed the responsibility of presenting his claim, and made it its own in seeking redress in respect of it." *Boynton* v. *Blaine*, 139 U.S. 306, 323; *Z. & F. Assets Corp.* v. *Hull*, 311 U.S. 470, 478; cf. Borchard, *The Diplomatic Protection of Citizens Abroad*, pp. 356ff.[113] "For wrongs of that order the remedy to be followed is along the channels of diplomacy." *Shapleigh* v. *Mier*, 299 U.S. 468, 471.

The decision of Congress to make the funds vested in the Alien Property Custodian available for the payment of the claims of American citizens and nationals[114] against the Axis powers, therefore, constituted an act of diplomatic protection, an exercise of the foreign relations powers of the United States. This congressional purpose is fully evidenced by the statement of Senator Magnuson on the floor of the Senate that the War Claims Commission was to "be set up similar to the Mixed Claims Commission which was created after World War I".[115] The War Claims Commission accordingly was entrusted with the performance of an

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[112] *Frelinghuysen* v. *Key*, 110 U.S. 63, 71.

[113] See also *supra*, fn. 106.

[114] Nearly one half of the prisoners of war claims were presented by Filipinos (War Claims Commission, Ninth Semi-annual Report to Congress, p. 6). These claimants had been nationals of the United States at the time the wrong was committed; hence, they were entitled to the diplomatic protection of the United States. *Barber* v. *Gonzales*, 347 U.S. 637, 639, fn. 1.

[115] 94 Cong. Rec. 8752. *War Claims Commission*, *supra*, fn. 3, pp. 91, 97, indicates that, in establishing the War Claims Commission, the Senate Subcommittee relied on the precedent and practice of these Mixed Claims Commissions. The unfortunate experience with these commissions (cf. *Z. & F. Assets Corp.* v. *Hull*, 311 U.S. 470, 480-485) may have motivated Congress to establish a commission composed only of American members.

important aspect of the foreign relations power of the United States.

b. ***In performing functions related to the foreign relations power, the War Claims Commission was a part of the executive branch, as Congress was aware.*** It is well established that the conduct of foreign relations has been allocated to the two political [116] branches of the Government, the executive and the legislative, to the exclusion of the judicial one. *Oetjen* v. *Central Leather Co.*, 246 U.S. 297, 302; *Chicago & Southern Air Lines* v. *Waterman S.S. Corp.*, 333 U.S. 103, 111; *Wilson* v. *Girard*, 354 U.S. 524, 530. It follows that the War Claims Commission could not have constituted a part of the judicial branch or performed functions analogous to those commonly performed by the judiciary. And, even as between the two political branches, it is recognized that the executive ordinarily enjoys primacy in the field of foreign relations.

The Constitution has been understood in this way from the very beginning. On April 24, 1790, Thomas Jefferson, then Secretary of State, gave the following official opinion:

> * * * The transaction of business with foreign nations is Executive altogether. It belongs, then, to the head of that department except as to such portions of it as are specially submitted to the Senate. Exceptions are to be construed strictly.[117]

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[116] *Humphrey's Executor* v. *United States*, 295 U.S. 602, 624, excepts from its application officers whose duties are of a political nature. *See* also *Myers* v. *United States*, 272 U.S. 52, 132-134.

[117] *The Writings of Thomas Jefferson* (Memorial Ed.), Vol. 3, pp. 15, 16. See also the similar remarks of Madison in the House of Representatives during the Great Debate of 1789, 1 Ann. Cong. 463-464, 496; Crosskey, *Politics and the Constitution of the United States*, Vol. 1, pp. 417-418.

Ten years later, on March 7, 1800, during the debate involving the extradition of Jonathan Robbins, John Marshall stated in the House of Representatives, of which he was then a member:

> * * * The President is the sole organ of the nation in its external relations, and its sole representative with foreign nations. * * *
>
> * * * * *
>
> The Executive is not only the Constitutional department, but seems to be the proper department to which the power in question may most wisely and most safely be confided.
>
> The department which is entrusted with the whole foreign intercourse of the nation * * * [118]

It is noteworthy that this statement, limited to the conduct of foreign affairs, did not arouse antagonism such as that brought on by Hamilton's assertion in the Pacificus letters that the executive powers of the President were not limited to those enumerated in Article II.[119] On the contrary, it persuaded a large portion of the Republican opposition to support the administration, and obtained a vote of 61 to 35 in a House almost evenly divided on a party basis.[120] See also the report of February 15, 1816, by the Senate Committee on Foreign Relations, particularly that part quoted in *United States* v. *Curtiss-Wright Corp.*, 299 U.S. 304, 319.

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[118] 10 Ann. Cong. (6th Cong.) 613-614.

[119] Cf. the Helvidius Letters, Madison, *Letters and Writings*, Vol. I, pp. 607-654.

[120] Beveridge, *The Life of John Marshall*, Vol. 2, pp. 473-475. The shrinkage of the Senate's role in the negotiation of treaties, in which it has an express place under the Constitution, has often been told. See Corwin, *The President—Office and Powers* (1948 Ed.), pp. 253ff.

It is unnecessary to recall in detail that the Court has repeatedly reaffirmed, in recent years, the conceptions underlying Jefferson's and Marshall's declarations. "In this vast external realm, with its important, complicated, delicate and manifold problems, the President alone has the power to speak or listen as a representative of the nation. * * * the very delicate, plenary and exclusive power of the President as the sole organ of the federal government in the field of international relations * * *". *United States* v. *Curtiss-Wright Corp.*, 299 U.S. 304, 319-320. See also *United States* v. *Belmont*, 301 U.S. 324, 330; *United States* v. *Pink*, 315 U.S. 203, 222-223, 229-230; *Chicago & Southern Air Lines* v. *Waterman S.S. Corp.*, 333 U.S. 103, 109.

An agency established squarely in the field of foreign relations therefore is presumptively of an executive nature. Such an agency may be contrasted with the Federal Trade Commission, which was involved in *Humphrey*. The legislative nature of the latter agency is based upon the theory that it exercises "an unexpended grant of legislative power".[121] But *United States* v. *Curtiss-Wright Corp.*, *supra*, at 315-322, teaches that the field of foreign relations is governed by entirely different standards concerning the delegation of powers. Because of these differences, the implementation of a statute such as the War Claims Act should be deemed to constitute essentially an executive operation, at least in the absence of a clear showing of a contrary Congressional purpose.

As a practical matter, the determination of claims of American citizens against foreign nations has traditionally been committed to administrative officers or

[121] See *supra*, p. 47.

agencies. For example, Attorney General Cushing's report on the Office and Duties of the Attorney General, 6 Op. Att. Gen. 326, mentions (at p. 337) that the "Attorney General has himself been called on to act as a commissioner to adjudicate claims under treaty, as in the case of the convention of indemnities between the United States and the Republic of Peru (August 8, 1841)". And a permanent statute (the Act of February 27, 1896, 29 Stat. 28, 32, 31 U.S.C. 547), provides that, where the United States collects funds as the result of its sponsorship of claims of its citizens against foreign governments, the Secretary of State shall determine the amounts due the several claimants.

Moreover, the statutory plan of the War Claims Act of 1948 indicates the congressional awareness of the executive character of the War Claims Commission. This appears from the fact that the Commission was given a status analogous to that of the Mixed Claims Commission,[122] which certainly related to the executive conduct of foreign affairs. *Z. & F. Assets Corp.* v. *Hull*, 311 U.S. 470, 489. Even more conclusive is the circumstance that under Section 4 of the Act (Stat. App. 74-76) the adjudication of the claims of certain types of civilian internees was entrusted first to the Federal Security Administrator and later to the Secretary of Labor.[123] If Congress had felt that the adjudication of war claims was not an executive matter, it certainly would not have provided for the administration of parts of the Act by an agency indisputably executive in nature.[124]

[122] See *supra*, pp. 8, 61.

[123] See *supra*, p. 9 and fn. 15.

[124] Little weight can be given to the debates on the War Claims Act in the House of Representatives (Pet. Br. 24-25). According to

The post-legislative history of the Act is equally revealing. In the year following the enactment of the War Claims Act, the debates relating to the International Claims Settlement Act of 1949 (64 Stat. 12, 22 U.S.C. 1621ff, Stat. App. 93ff) demonstrate that Congress was fully aware of the executive character of such commissions. Section 3 of the Act (Stat. App. 93) established the International Claims Commission of the United States, a sister commission to the War Claims Commission, in the Department of State. The reason for this allocation as stated repeatedly by Representatives Richards, a ranking member of the House Committee of Foreign Affairs, and Ribicoff, the sponsor of the bill, was that under the Constitution "foreign settlements in protection of the rights of citizens or nationals of the United States are made by the executive department of this Government" (95 Cong. Rec. 8847) and that "the determination of all claims of this sort is the function of the executive department and not the function of the court" (95 Cong. Rec. 8845; see also 95 Cong. Rec. 8836, 8847, 8851, 8979-8980).

The same inference is to be drawn from the congressional approval of Reorganization Plan No. 1 of 1954, which merged the War Claims Commission with the International Claims Commission into the Foreign Claims Settlement Commission (*supra*, pp. 11-12). Since, under Section 7 of the Reorganization Act of 1949 (63 Stat. 205, 5 U.S.C. 133z-5), the President's

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the House bill, the Commission would have been charged merely with the preparation of a report; no provision was made for the payment of the ordinary prisoner of war and interned claims. Representative Gearhart, it is true, offered an amendment to the bill providing for the payment of claims through the federal courts. This amendment, however, was ruled out as not germane to the purposes of the bill, after it had been pointed out that the claims were not of a justiciable character (94 Cong. Rec. 566-569).

reorganization powers are limited to the establishments in the executive branch of the Government, the ratification of the Reorganization Plan indicates recognition by Congress that the War Claims Commission had been of an executive nature. Moreover, the International Claims Commission, the agency with which the War Claims Commission was merged, was established in the Department of State and concededly was executive in character.

Contrary to petitioner's suggestion (Pet. Br. 33-34), the failure of the Senate to confirm President Eisenhower's nominees to the War Claims Commission (*supra*, pp. 12-13) is not evidence of any senatorial disapproval of the petitioner's removal. The Senate may very well have held up the confirmations in view of the pendency of Reorganization Plan No. 1 of 1954, pursuant to which the War Claims Commission was to be abolished as of July 1, 1954 (*supra*, pp. 11-12, 66). The relative speed with which the Senate confirmed the Foreign Claims Settlement Commissioners [125] would tend to show that the Senate had considered their nominations [126] and withheld action until the Reorganization Plan became effective.

To sum up: the War Claims Commission was established in the executive branch of the Government and exercised a part of the foreign relations power, a peculiarly executive function.[127] The President's power to

[125] They were nominated on July 23 and confirmed on August 6, 1954 (*supra*, p. 13). Compare with this the more than three months which elapsed between petitioner's nomination and confirmation (*supra*, p. 12).

[126] It will be remembered that two of the Foreign Claims Settlement Commissioners were the President's nominees to the War Claims Commission.

[127] Petitioner thus was one of "those who exercise the President's own powers, whether of statutory or constitutional origin." Corwin, *supra*, fn. 120, at p. 111; *id.* at 114.

remove its members, therefore, could not be limited by Congress.

C. Even Assuming That Petitioner Was a Non-executive Officer, His Removal Was Nevertheless Proper Since Congress Did Not Limit the President"s Power to Remove War Claims Commissioners

We have sought to show that petitioner's office was within the executive branch of the Government, and that the President's removal power consequently could not be limited by the Congress. Petitioner, however, was properly removed even if we assume, *arguendo*, that he did not hold an executive office.

As we have demonstrated (*supra*, pp. 39-43), the President has the power to remove non-executive officers in the absence of congressional action to the contrary. Congress has not limited the President's removal power in connection with the War Claims Commission. This has been established by the unmodified judgment in the quo warranto proceedings. That judgment, moreover, is plainly correct, since the applicable statutes do not limit—either expressly or impliedly—the President's removal power. To the contrary, should it be assumed that the President may remove a non-executive officer only if Congress confers removal authority upon him, the plain inference of the statutory plan is that the President was expected to exercise such authority and that the cumbersome impeachment procedure was not to be the only means of discharging petitioner.

1. *The unreversed judgment in the quo warranto proceedings establishes that Congress did not limit the President's power to remove petitioner*

The quo warranto proceedings instituted by petitioner were dismissed on the ground that the "War

Claims Act of 1948 contains no limitation upon or prohibition of the exercise of the executive power of removal conferred upon the President of the United States" (App., *infra*, pp. 86-87). The judgment which was based upon this opinion (App., *infra*, p. 88) never has been vacated or otherwise modified, although the appeal was dismissed as moot by stipulation. In these circumstances, under ordinary principles of res judicata and collateral estoppel, the determination of the District Court precludes petitioner from claiming now that Congress had limited the President's power to remove the War Claims Commissioners.[128] See *United States* v. *Munsingwear*, 340 U.S. 36.

The issue of whether or not Congress had limited the President's removal power is common to the quo warranto proceedings and to the one at bar. While the causes of action are based upon different demands[129] so that the former judgment does not operate as a complete bar to the institution of these proceedings,[130] the issues actually litigated and determined in the District Court cannot be relitigated here. "Once a party has fought out a matter in litigation with the other party, he cannot later renew that duel". *Commissioner* v. *Sunnen*, 333 U.S. 591, 598; *Cromwell* v. *County of Sac*,

[128] This contention was not passed upon by the Court of Claims although the defense was raised in the Government's answer (R. 12) and brief (p. 4). See fn. 35, *supra*. The contention is of particular significance in view of this Court's practice of avoiding constitutional questions when a non-constitutional ground is available. See, e.g., *Rescue Army* v. *Municipal Court of Los Angeles*, 331 U.S. 549, 568-573.

[129] The District Court action involved the Commissioners' right to hold office; in these proceedings, petitioner claims his salary (*supra*, pp. 13-14).

[130] *Cromwell* v. *County of Sac*, 94 U.S. 351, 352; *Commissioner* v. *Sunnen*, 333 U.S. 591, 597.

94 S. 351, 352; *Southern Pacific R. Co.* v. *United States*, 168 U.S. 1, 48-49; *United States* v. *International Building Ass'n*, 345 U.S. 502, 504-505; and see *Yates* v. *United States*, 354 U.S. 298, 335-336.

The circumstance that the *nominal* parties in the two proceedings are not identical does not defeat the operation of the rules of res judicata and collateral estoppel. *Sunshine Coal Co.* v. *Adkins*, 310 U.S. 381, 402. As this Court pointed out in *Chicago, R. I. & P. Ry.* v. *Schendel*, 270 U.S. 611, 620: "Identity of parties is not a mere matter of form, but of substance. Parties nominally the same may be, in legal effect, different * * *; and parties nominally different may be, in legal effect, the same". Although the quo warranto proceedings were brought in the name of the United States, they were not a suit by the United States, but an action filed by the petitioner adversary to the interests of the United States. *United States ex rel. Goodrich* v. *Guthrie*, 17 How. 284, 302; *United States* v. *Morris*, 10 Wheat. 246, 301-302; *First Federal Savings & Loan Ass'n* v. *Loomis*, 97 F. 2d 831, 834 (C.A. 7), certiorari granted, 305 U.S. 564, dismissed on motion of petitioners, 305 U.S. 666. Conversely, the defendants in the quo warranto proceedings represented the interests of the United States, and were in turn represented by the Department of Justice. (App., *infra*, p. 86).[13] The United States thus was a true defendant in the quo warranto proceed-

[13] "[F]or it must be admitted that the secretary of the treasury [the defendant in mandamus proceedings brought *ex relatione*] can have no relation whatever, and is clothed with no powers and sustains no obligation incident to the present controversy, except as he is the representative of the United States, or the guardian or custodian of their interests, committed to his charge". *United States ex rel. Goodrich* v. *Guthrie*, 17 How. 284, 302.

ings. *United States* v. *Allied Oil Co.*, 341 U.S. 1, 5. In any event, there was privity between the nominal defendants and the United States.[132]

The unmodified judgment of the District Court thus estops petitioner from relitigating the issue of whether or not Congress had limited the President's removal power. This result is not affected by the circumstances that the *quo warranto* proceedings—after the District Court's judgment—became moot as the result of the abolition of the War Claims Commission, and that the parties consequently stipulated for the dismissal of the appeal. The dismissal did not provide for the vacating of the District Court's judgment, which therefore retained its binding effect.

As this Court held in *United States* v. *Mansingwear*, *supra*, 340 U.S. at 38-40, the dismissal of appellate proceedings for reason of mootness neither justifies the creation of an exception to the salutary rule that every judgment is binding until it has been set aside, nor does such dismissal estop the appellee from relying on the judgment. The proper procedure in this situation is to reverse or vacate the judgment or to remand it with directions to dismiss. A litigant who does not avail himself of these remedies must be considered to have acquiesced in the continued operation of the judgment as a merger, bar, or estoppel.[133] The Court's opinion concludes (p. 41):

[132] *Sunshine Oil Co.* v. *Adkins*, 310 U.S. 381, 402-403; *Tait* v. *Western Maryland Ry. Co.*, 289 U.S. 620; *Bruszewski* v. *United States*, 181 F. 2d 419 (C.A. 3), certiorari denied, 340 U.S. 865; *Adrianse* v. *United States*, 184 F. 2d 968 (C.A. 2), certiorari denied, 340 U.S. 932; *Williams* v. *United States*, 134 F. Cls. 763.

[133] The Court expressly disapproved of decisions such as *Gelpi* v. *Tugwell*, 123 F. 2d 377 (C.A. 1), which seemed to imply that mootness by itself destroyed the binding effect of a judgment. 340 U.S. at 39.

> **The case is therefore one where the [petitioner], having slept on its rights, now asks us to do what by orderly procedure it could have done for itself. The case illustrates not the hardship of res adjudicata but the need for it in providing terminal points for litigation.**

That holding is fully applicable here.

2. *Congress did not expressly limit the President's power to remove members of the War Claims Commission*

We have shown that petitioner is estopped by the judgment of the District Court from relitigating the question as to whether Congress has limited the President's power to remove members of the War Claims Commission. However, even if we assume *arguendo* that this issue were still open to him, the concurrent decisions of the District Court and of the Court of Claims on this point are plainly correct on their merits.

In the *Humphrey* case, 295 U.S. 602, this Court held that, by fixing a definite term of office and by providing for removal for cause, Congress clearly had indicated its intent that the incumbent was not to be removed during the term for any cause other than the enumerated ones (295 U.S. at 623, 632). The salient difference between the Federal Trade Commission Act involved in *Humphrey* and the War Claims Act is that the latter does not specify any causes for removal. This renders inapplicable here the basic argument in *Humphrey*—*viz.*, that the enumeration of certain grounds for dismissal is exclusive and, by operation of the *ex-*

pressio unius rule, prohibits discharges for any other reason (295 U.S. 622-623).[134]

The mere circumstance that the statute provides for a term equal to that of the life of the Commission does not mean that petitioner could not be removed during this term except by way of impeachment. The established import of the fixing of a term of office is that the officer has to be reappointed by the President and reconfirmed by the Senate at the end of the term, not that he may not be discharged during that period. The development of this doctrine began with the Debate of 1789. Then James Madison suggested that the Comptroller of the Treasury "should hold his office during —— years, unless sooner removed by the President" because "by this means the Comptroller would be dependent upon the President, because he can be removed by him; he will be dependent upon the Senate, because they must consent to his election for every term of years * * *." (1 Ann. Cong. 612; see also *supra*, p. 26, fn. 46).

Later rulings similarly recognize that the purpose of the specification of a term of office thus is to insure periodic senatorial scrutiny of the conduct of

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[134] Note in this connection *Morgan* v. *Tennessee Valley Authority*, 115 F. 2d 990 (C.A. 6), certiorari denied, 312 U.S. 701. The statute establishing the Tennessee Valley Authority provides that the members of the board of directors of the Tennessee Valley Authority may be removed at any time by a concurrent resolution of the Senate and the House of Representatives and that the President shall remove any member who has been found guilty of appointing or promoting officials or employees for political reasons rather than on the basis of merits and efficiency. The court held that the methods of discharge expressly provided for by the statute were not intended to be exclusive and that the President had the authority to remove a director on the ground that he had raised unfounded charges against his colleagues.

an office holder, even where such specification is not accompanied by a clause such as "unless sooner removed by the President". Thus, in 1851, in connection with the removal of Chief Justice Goodrich of the Territorial Court of Minnesota, who, according to statute held office for four years, Attorney General Crittenden ruled: "The law intended no more than that these officers should certainly, at the end of that term, be either out of office, or subjected again to the scrutiny of the Senate upon a renomination" (5 Op. A.G. 288, 291). While this Court did not pass on the merits of Judge Goodrich's removal,[135] it held subsequently in *McAllister* v. *United States*, 141 U.S. 174, that a territorial judge could be removed by the President before the expiration of his term.

The decision in *Parsons* v. *United States*, 167 U.S. 324, 338-342, finally established the terse formula that provisions for a term of office are in the nature of a limitation, not of a grant.[136] This was acknowledged even by the dissenting opinion of Mr. Justice Brandeis in the *Myers* case. As the Justice there stated: "It is settled that, in the absence of a provision expressly providing for the consent of the Senate to a removal, the clause fixing the tenure will be construed as a limitation, not as a grant; and that, under such legislation, the President, acting alone, has the power of removal" (272 U.S. at 241).

In other words, where the statute merely fixes a term and does not otherwise specify the President's removal

[135] *See United States ex rel. Goodrich* v. *Guthrie*, 17 How. 284.

[136] The rules governing the interpretation of the meaning of a specified term of office thus were developed largely in connection with the offices of territorial judges, *i.e.*, of officials whom petitioner would classify as not purely executive (Pet. Br. 32-33).

power, the import of the term is merely that the officer cannot remain in office for a period in excess of the term, unless reappointed. He has, however, no assurance that he will hold office that long.[137] This interpretation of the meaning of a term of office has been reaffirmed only recently in two decisions of the Court of Claims. *Carey* v. *United States*, 132 C. Cls. 397; *Farley* v. *United States*, 134 C. Cls. 672, certiorari denied, 352 U.S. 891.

The reference in the *Humphrey* decision to Humphrey's term of office does not indicate any departure from this consistent interpretation. Instead, the express purpose of the reference was to distinguish the case from *Shurtleff* v. *United States*, 189 U.S. 311. Shurtleff, a member of the Board of General Appraisers (of Merchandise),[138] served under a statute which expressly permitted his removal by the President for inefficiency, neglect of duty, or malfeasance in office—*i.e.*, for reasons identical with those enumerated in Section 1 of the Federal Trade Commission Act (*supra*, p. 36). This Court had held in *Shurtleff* "that the

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[137] *Marbury* v. *Madison*, 1 Cranch 137, it is true, contains a famous dictum that the President had no power to remove a justice of the peace of the District of Columbia during his term of office (p. 162). This aspect of *Marbury* v. *Madison*, however, has been disapproved, if not overruled, by this Court in *Parsons* v. *United States*, 167 U.S. 324, 335-336, and *Myers* v. *United States*, 272 U.S. 52, 139-144. In any event, that dictum may be based upon the peculiar dual status of the courts established by Congress for the District of Columbia. Compare in this respect *Williams* v. *United States*, 289 U.S. 553, with *Donoghue* v. *United States*, 289 U.S. 516, and see the discussion of *Marbury* v. *Madison* in *McAllister* v. *United States*, 141 U.S. 174, 188-189; *Parsons* v. *United States*, 167 U.S. 324, 335-336; *Myers* v. *United States*, 272 U.S. 52, 143. Note also *National Insurance Co.* v. *Tidewater Co.*, 337 U.S. 582, for the unique status of the courts in the District of Columbia.

[138] See *supra*, fn. 65.

mere specification in the statute of some causes for removal * * * [did not exclude] the right of the President to remove for any other reason which he, acting with a due sense of his official responsibility, should think sufficient" (189 U.S. at 317). In reaching this conclusion, this Court rested in part on the argument that, if the General Appraisers were removable only for cause, they would in effect hold office for life (because the law presumes good behavior), and that Congress could not be deemed to have intended such a result (189 U.S. at 316).

In other words, in *Shurtleff*, the presumption against life terms militated against the operation of the *expressio unius* rule. This consideration, however, was held inapplicable in *Humphrey* because the terms of the Federal Trade Commissioners were limited to seven years; the statutory grounds for removal therefore were considered exclusive. 295 U.S. at 621-623. Nothing in *Humphrey* even remotely suggests that a fixed term of office, apart from the specification of causes for removal and other factors (*infra*, pp. 77-82), gives a Presidential appointee the right to stay in that office throughout the term unless impeached. On the contrary, the *Humphrey* decision is fully in accord with the well settled doctrine that such a provision will be construed as a limitation, not as a grant.

The statutory language that petitioner's term was to expire at the time fixed for the winding up of the affairs of the Commission[39] thus did not curtail the President's power of removal.

[39] In *Humphrey*, the Court also relied to some extent on the emphatic statutory language that the commissioners should "continue in office" (295 U.S. at 623-624). Section 2 of the War

3. *The implication of the statutory plan is that Congress did not limit the President's removal power but rather contemplated the President's exercise of that authority.*

In *Humphrey*, the Court found that the congressional intent to limit the President's removal power was not only "clear upon the face of the statute", but also was "made clear by a consideration of the character of the commission and the legislative history" of the Federal Trade Commission Act (295 U.S. at 624). No such implication may be drawn from the War Claims Act. On the contrary, the statutory plan indicates that Congress could not have intended to exempt the War Claims Commissioners from all control except by impeachment, and that it must have envisaged their removal by the President.

a. *The War Claims Act did not curtail the President's removal power by implication.* This Court's decisions recognize that the congressional intent to limit the President's power must appear plainly either in the statutory language or by necessary implication (*e.g., Shurtleff v. United States*, 189 U.S. 311, 315-316). Here no such inference may be drawn from the statutory plan or the legislative history.

In *Humphrey*, this Court inferred the "clear" congressional intent to make the Federal Trade Commissioners nonremovable, except for cause, from the legislative history of the Act, the bipartisan structure,

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Claims Act (*supra*, pp. 4-5) does not use this positive language; it states that the commissioner's term of office shall expire at the time fixed for the winding up of the affairs of the Commission, the implication being merely that the terms should not exceed the life of the Commission.

and the requirement of complete impartiality. Here, the legislative history is silent on this point; there is no statutory requirement of bi-partisanship; and under the statutory plan, impartiality and responsibility can be secured better by keeping the Commissioners under executive control than by subjecting them exclusively to the practically unused impeachment procedure.

The fact that the War Claims Commission was set up as a separate establishment and not within an existing department merely shows that Congress conferred upon the Commissioners the privilege of reporting directly to the President, and not through a cabinet member.[10] It does not evidence a congressional intent to exempt the Commissioners from presidential control. Temporary commissions frequently have been set up as separate agencies purely for fiscal reasons. They can be abolished when the task is done without adding to the permanent staff of any existing permanent departments or agencies (see 95 Cong. Rec. 8836). On the other hand, practical politics being what they are, commissionerships have no doubt occasionally been created for reasons of patronage, especially where, as here, there is no statutory requirement of bipartisanship (see 95 Cong. Rec. 8853).[11] The fact that one Congress establishes a commission which the then President may

[10] With respect to petitioner's argument that the establishment of a commission is indicative of a congressional intent to provide for a permanent and irremovable body of experts (Pet. Br. 19, 35), see Representative Gearhart's sarcastic remarks about "experts" seeking to perpetuate themselves in office. 94 Cong. Rec. 566.

[11] The important role played by patronage in the actual working of our political system as a frequently crucial tool in the system of checks and balances between the executive and legislative branches cannot be ignored. See in this connection Mason, *Harlan Fiske Stone: Pillar of the Law*, p. 228.

fill with persons whom he trusts is not indicative of an intent to deprive the next President of the authority to staff the Commission with personnel in whom he has confidence.

In *Humphrey* this Court placed its decision (at least in part) on the need for safeguarding impartiality of decision by the Federal Trade Commissioners. Here, on the other hand, presidential supervision would have guaranteed greater responsibility of decision than freedom from executive (which in this case would have meant *all*) control. The effect of *Humphrey* left the Federal Trade Commissioners subject to executive removal for inefficiency, neglect of duty, or malfeasance in office (*supra*, p. 36). Here, a ruling that Congress by implication had limited the President's removal power would mean that he could not have removed the War Claims Commissioners for any reason. And this in spite of the circumstances that there was no bi-partisan composition of the Commission, that the decisions of the Commissioners were not subject to judicial review,[142] that they had the power to dispose of a fund of nearly $300,000,000,[143] and that their rulings would touch on sensitive areas in the field of international relations.[144] The Commissioners in which such significant powers are vested thus would be subject only

[142] War Claims Act, Section 11 (Stat. App. 85).

[143] See *supra*, p. 6.

[144] For the extent to which the decisions of international claims commissioners may involve the national honor and good faith, see the *La Abra Silver Mining Co.* incident described in *Frelinghuysen v. Key*, 110 U.S. 63; *Boynton v. Blaine*, 139 U.S. 306; *La Abra Silver Mining Co. v. United States*, 175 U.S. 423, 458. See also *Z. & F. Assets Corp. v. Hall*, 311 U.S. 470, 487. For the examples of the potential international implications of the decisions of the War Claims Commission, see *Settlement of Claims*, *supra*, fn. 26, pp. 424ff.

to the cumbersome and almost impossible control by way of impeachment which has been characterized realistically as not providing "an effective way of enforcing even minimum standards of efficiency and honesty".[145] These temptations increase immeasurably where the Commissioners and the President do not belong to the same political party, *i.e.*, where the restraints of party loyalty and the desire not to embarrass the President are lacking. To grant the removal power to the President and to subject the Commissioners to his supervision thus would enhance, rather than jeopardize, responsibility and impartiality in the decisions of such a commission.[146]

The argument that Congress has limited the President's removal power by implication, also overlooks the actual drafting practice of Congress. The three statutes which established regulatory commissions since the *Humphrey* decision all provide expressly that the President may remove the Commissioners only for cause.[147] Congress thus is well aware of the rule that the President has the power to remove non-executive officers unless the statute limits his authority. In these

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[145] Cushman, *The Constitutional Status of the Independent Regulatory Commissions*, 24 Cornell Law Quarterly 13 and 163, 178.

[146] The role played by the Commission's staff in passing on the great bulk of uncontested claims (*supra*, p. 40) should not be overlooked either. Here the main protection of the claimants' rights are to be found in the operation of the merit civil service system and in the Administrative Procedure Act (Section 11, 5 U.S.C. 1010) protecting the status of trial examiners.

[147] National Labor Relations Act of 1935, 49 Stat. 451, as amended by the Labor Management Relations Act, 1947, Section 3, 61 Stat. 139, 29 U.S.C. 153; Civil Aeronautics Act, Section 201(a), 52 Stat. 980, as amended, 49 U.S.C. 421; Internal Security Act of 1950, Section 12(a), 64 Stat. 997, 50 U.S.C. 791.

circumstances, the failure of Congress to limit the President's removal authority indicates an intention that he exercise that power without any restrictions.

From the statutory plan of the War Claims Act, it certainly is not "clear" that Congress sought to deny to the President the power to remove the members of the War Claims Commission. Instead, the congressional drafting technique and the absence of provisions permitting removal for cause, of judicial review, and of bi-partisan composition of the Commission, support the contrary inference—*viz.*, that the President has the power to remove the Commissioners if he feels that the national interest requires it.[148]

b. *Congress by implication authorized the President to remove the members of the War Claims Commission.*—For the reasons already stated, it is our position that the President had the authority to remove petitioner even if we should assume *arguendo*, first, that petitioner was not an executive officer and, second, that the President could remove such officers only where authorized by Congress. In *Humphrey*, 295 U.S. at 624, this Court recognized that Congress may limit the President's removal power by clear implication. It follows conversely that the removal power also may flow by clear implication from the statutory plan and the character of the commission.

[148] See in this connection the discussion in *Shurtleff* v. *United States*, 189 U.S. 311, 317-318, demonstrating that a summary removal of an officer without cause for political reasons "cannot be regarded as the least imputation on his character for integrity or capacity", and that the removal power is limited by "the responsibility of the President under his oath of office to so act as shall be for the general benefit and welfare".

We have already shown previously that Congress could not have intended to subject merely to its impeachment power an official who can dispose of a fund of $300,000,000 in a sensitive area of international relations without safeguards of judicial review and of bipartisan composition of the commission. Moreover, it is hardly likely that Congress intended to confer greater immunity upon the members of this relatively unimportant temporary commission than upon the members of agencies such as the Interstate Commerce Commission, the Federal Trade Commission, the National Labor Relations Board, the Civil Aeronauties Board, and the Subversive Activities Control Board. Members of the latter agencies are subject to removal for cause by the President.[148]

The plain inference to be drawn from the failure to confer upon the President in terms the power to remove petitioner for cause, is not that petitioner is not removable at all, but that the President may remove him if he feels, under his oath of office, that the general welfare requires such action.[150]

4. *The decision in this case will have no bearing on the tenure of members of other commissions and of the judges of certain legislative courts*

Petitioner argues that, if the President has the power to remove him, he could by the same token freely re-

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[149] Interstate Commerce Act, Secs. 11, 24, as amended, 49 U.S. 9, 11; Federal Trade Commission Act, Sec. 1, 38 Stat. 717, 15 U.S.C. 41; Labor Management Relations Act, 1947, Sec. 3, 61 Stat. 139, 29 U.S.C. 153; Civil Aeronautics Act, Sec. 201(a), 52 Stat. 980, as amended, 49 U.S.C. 421; Internal Security Act of 1950, Sec. 12(a), 64 Stat. 997, 50 U.S.C. 791.

[150] Cf. *Shurtleff* v. *United States*, 189 U.S. 311, 317-318. See also fn. 148.

move the members of the Federal Power, Federal Communications, Securities and Exchange, and Tariff Commissions, and even the judges of the District Courts of Hawaii and Puerto Rico, because the statutes providing for the offices of those officers and judges, like the War Claims Act, provide for a limited term of office without any specification of the President's power of removal (Pet. Br. 8, fn. 10). We do not believe that this case affords a proper occasion to determine the status and tenure of those officers and judges, particularly if this Court should sustain our contention that petitioner is an executive officer.

In any event, the decision will have no bearing on the tenure of the members of the Tariff Commission in view of their unique dual status as advisors to the President and to Congress (*United States* v. *Bush & Co.*, 310 U.S. 371, 379). The same considerations apply to the positions of the District Judges of Hawaii and Puerto Rico. It is well established that the removal of legislative judges is governed by special rules and considerations (*Myers* v. *United States*, 272 U.S. 52, 157-158, *supra*, p. 34).[151] Even a ruling by this Court that petitioner, although not an executive officer, was removable by the President would not determine the

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[151] The import of the provision in 28 U.S.C. 134(a) that these judges hold office for terms of six and eight years, respectively, *and until their successors are appointed and qualified*, may well be that the Senate could render nugatory any attempted removal by the President by refusing to confirm a successor. Senatorial confirmation of a successor, however, has been considered the legal equivalent to the Senate's advice and consent to a removal. *Blake* v. *United States*, 103 U.S. 227, 236-237; *Parsons* v. *United States*, 167 U.S. 324, 341; *Wallace* v. *United States*, 257 U.S. 541, 545-547. In those circumstances, these judges would not serve at the pleasure of the President alone.

status of the remaining three commissions (F.P.C., F.C.C., and S.E.C.).[152] See, *e.g.*, *supra*, pp. 44-50, 72-73, 77-80.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the decision below should be affirmed.

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[152] These three commissions, whose basic statutes do not contain provisions such as involved in *Humphrey*, were established during the interval between the *Myers* and *Humphrey* decisions. See Commission on the Organization of the Executive Branch of the Government (Hoover Commission, 1949), Task Force Report, Appendix N (Committee on Independent Regulatory Commissions), p. 14. It is significant that the National Labor Relations Act, passed shortly after *Humphrey*, permits the President to remove the Board members only for cause. Section 3, 49 Stat. 451, 29 U.S.C. 153.

It is also significant that Congress failed to implement the recommendations made in 1949 by the Hoover Commission that, on the ground that the members of these three commissions were removable at the pleasure of the President, legislation should be enacted to assimilate their status to that of the other regulatory commissions (Hoover Commission Reports (1949), Rept. No. 12, *The Independent Regulatory Commissions*, pp. 6-7). Legislation to that effect was introduced in Congress in 1949 (S. Rept. 1158, 81st Cong., 1st Sess., p. 275), but died in committee. See the indices to Vols. 95 and 96 of the Congressional Record with respect to S. 2059, H.R. 5173. It will be noted that these bills limiting the President's removal power to instances of inefficiency, neglect of duty, or malfeasance in office did not include the War Claims Commission.

APPENDIX

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 447-54

THE UNITED STATES OF AMERICA, ON RELATION OF MYRON WIENER, PETITIONER,

v.

RAYMOND T. ARMBRUSTER, WHITNEY GILLILAND, PEARL CARTER PACE, c/o WAR CLAIMS COMMISSION, WASHINGTON, D. C., RESPONDENTS

Washington, D. C.,
Thursday, March 25, 1954.

The above-entitled action came on for hearing on motion to dismiss or in alternative for summary judgment on petition for writ in nature of quo warranto, before the HON. EDWARD M. CURRAN, United States District Judge, at 11:20 a.m.

APPEARANCES:

On behalf of the Petitioner: I. H. Wachtel, Esq., James G. Ross, Esq., and Charles H. Mayer, Esq.

On behalf of the Respondents: Edward H. Hickey, Bruce H. Zeiser, and Andrew P. Vance, Attorneys, Department of Justice.

RULING OF THE COURT

The Court: The Act of Congress establishing the War Claims Commission, in Section 2 (a) provides that the terms of office of the members of the Commission shall expire at the time fixed in subsection (d), which counsel on both sides have conceded is subsection (e), for the winding up of the affairs of the Commission.

Subsection (e) provides that the Commission shall wind up its affairs at the earliest practicable time after the expiration of the time for filing claims, but in no event later than three years after the expiration of such time.

Now, that merely means that the terms of office shall either expire after the expiration of the time for filing claims; or not later than three years after the expiration of such time. The Act, therefore, in establishing the War Claims Commission did not provide a fixed term of office for the Commissioners. Although the War Claims Commissioners held their office at the pleasure of the President, the War Claims Act of 1948 contains no limitation upon or prohibition of the exercise of the executive power of removal conferred upon the President of the United States.

The Act of the President in removing the relator as a member of the War Claims Commission is valid and constitutional.

The motion to dismiss is granted and the writ in the nature of quo warranto is quashed.

Counsel for the respondents will prepare the proper order.

(Whereupon, the foregoing proceedings were concluded.)

CERTIFICATE OF OFFICIAL COURT REPORTER

I, Margaret A. Deeds, one of the official reporters of the United States District Court for the District of Columbia, hereby certify that the foregoing is the official transcript of the Ruling of the Court in the above-entitled proceedings.

Dated this 25th day of March, 1954.

(s) MARGARET A. DEEDS,
Official Court Reporter.

Filed March 30, 1954, Harry M. Hull, Clerk.

IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

Civil Action No. 447-54

THE UNITED STATES OF AMERICA, ON RELATION OF MYRON WIENER, PETITIONER,

v.

RAYMOND T. ARMBRUSTER, WHITNEY GILLILLAND, PEARL CARTER PACE, c/o WAR CLAIMS COMMISSION, WASHINGTON, D. C., RESPONDENTS

ORDER

This cause having come on for hearing on March 25, 1954 upon respondents' motion to dismiss or in the alternative for summary judgment, and the Court having considered the pleadings with exhibits and memoranda filed by the parties and the argument of counsel, and the Court having rendered an oral opinion, it is by this Court this 30 day of March, 1954

ORDERED that the motion to dismiss the action be and the same is hereby granted, and the action is dismissed with prejudice; and it is further

ORDERED that the writ in the nature of quo warranto be and the same is hereby quashed.

(S.) EDWARD M. CURRAN,
Judge.

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No. 52

In the Supreme Court of the United States

OCTOBER TERM, 1957

MYRON WIENER, PETITIONER

v.

UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF CLAIMS

STATUTORY APPENDIX TO THE BRIEF FOR THE UNITED STATES

J. LEE RANKIN,
Solicitor General.

GEORGE COCHRAN DOUB,
Assistant Attorney General.

PAUL A. SWEENEY,
HERMAN MARCUSE,
Attorneys,

Department of Justice, Washington 25, D. C.

TRADING WITH THE ENEMY ACT

AS AMENDED

SETTLEMENT OF WAR CLAIMS ACT OF 1928

AS AMENDED

WAR CLAIMS ACT OF 1948

AS AMENDED

INTERNATIONAL CLAIMS SETTLEMENT ACT OF 1949

AS AMENDED

Together with certain other statutes relating to enemy property or war claims, certain relevant Executive orders, and extracts from reorganization plans, treaties and international agreements

---

PREPARED FOR THE USE OF THE

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE
HOUSE OF REPRESENTATIVES

BY THE OFFICE OF THE LEGISLATIVE COUNSEL

JANUARY 3, 1956

UNITED STATES
GOVERNMENT PRINTING OFFICE
WASHINGTON : 1956

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TRADING WITH THE ENEMY ACT, AS AMENDED

INCLUDING SPECIFIC AMENDMENTS MADE PRIOR TO JANUARY 3, 1956

TRADING WITH THE ENEMY ACT, AS AMENDED

[PUBLIC—No. 91—65TH CONGRESS]

[§§ 1-2] [40 Stat. L 411]

AN ACT To define, regulate, and punish trading with the enemy, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act shall be known as the "Trading with the enemy Act."

SEC. 2. That the word "enemy," as used herein, shall be deemed to mean, for the purposes of such trading and of this Act—

(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of any nation with which the United States is at war or incorporated within any country other than the United States and doing business within such territory.

(b) The government of any nation with which the United States is at war, or any political or municipal subdivision thereof, or any officer, official, agent, or agency thereof.

(c) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term "enemy."

The words "ally of enemy," as used herein, shall be deemed to mean—

(a) Any individual, partnership, or other body of individuals, of any nationality, resident within the territory (including that occupied by the military and naval forces) of any nation which is an ally of a nation with which the United States is at war, or resident outside the United States and doing business within such territory, and any corporation incorporated within such territory of such ally nation, or incorporated within any country other than the United States and doing business within such territory.

(b) The government of any nation which is an ally of a nation with which the United States is at war, or any political or municipal subdivision of such ally nation, or any officer, official, agent, or agency thereof.

(c) Such other individuals, or body or class of individuals, as may be natives, citizens, or subjects of any nation which is an ally of a

nation with which the United States is at war, other than citizens of the United States, wherever resident or wherever doing business, as the President, if he shall find the safety of the United States or the successful prosecution of the war shall so require, may, by proclamation, include within the term "ally of enemy."

The word "person" as used herein, shall be deemed to mean an individual, partnership, association, company, or other unincorporated body of individuals, or corporation of body politic.

The words "United States," as used herein, shall be deemed to mean all land and water, continental or insular, in any way within the jurisdiction of the United States or occupied by the military or naval forces thereof.

The words "the beginning of the war," as used herein, shall be deemed to mean midnight ending the day on which Congress has declared or shall declare war or the existence of a state of war.

The words "end of the war," as used herein, shall be deemed to mean the date of proclamation of exchange of ratifications of the treaty of peace, unless the President shall, by proclamation, declare a prior date, in which case the date so proclaimed shall be deemed to be the "end of the war" within the meaning of this Act.

The words "bank or banks," as used herein, shall be deemed to mean and include national banks, State banks, trust companies, or other banks or banking associations doing business under the laws of the United States, or of any State of the United States.

The words "to trade," as used herein, shall be deemed to mean—

(a) Pay, satisfy, compromise, or give security for the payment or satisfaction of any debt or obligation.

(b) Draw, accept, pay, present for acceptance or payment, or indorse any negotiable instrument or chose in action.

(c) Enter into, carry on, complete, or perform any contract, agreement, or obligation.

(d) Buy or sell, loan or extend credit, trade in, deal with, exchange, transmit, transfer, assign, or otherwise dispose of, or receive any form of property.

(e) To have any form of business or commercial communication or intercourse with.

SEC. 3. That it shall be unlawful—

(a) For any person in the United States, except with a license of the President, granted to such person, or to the enemy, or ally of enemy, as provided in this Act, to trade, or attempt to trade, either directly or indirectly, with, to, or from, or for, or on account of, or on behalf of, or for the benefit of, any other person, with knowledge or reasonable cause to believe that such other person is an enemy or ally of enemy, or is conducting or taking part in such trade, directly or indirectly, for, or on account of, or on behalf of, or for the benefit of, an enemy or ally of enemy.

(b) For any person, except with the license of the President, to transport or attempt to transport into or from the United States, or for any owner, master, or other person in charge of a vessel of American registry to transport or attempt to transport from any place to any other place, any subject or citizen of an enemy or ally of enemy nation, with knowledge or reasonable cause to believe

that the person transported or attempted to be transported is such subject or citizen.

(c) For any person (other than a person in the service of the United States Government or of the Government of any nation, except that of an enemy or ally of enemy nation, and other than such persons or classes of persons as may be exempted hereunder by the President or by such person as he may direct), to send, or take out of, or bring into, or attempt to send, or take out of, or bring into the United States, any letter or other writing or tangible form of communication, except in the regular course of the mail; and it shall be unlawful for any person to send, take, or transmit, or attempt to send, take, or transmit out of the United States, any letter or other writing, book, map, plan, or other paper, picture, or any telegram, cablegram, or wireless message, or other form of communication intended for or to be delivered, directly or indirectly, to an enemy or ally of enemy: *Provided, however*, That any person may send, take, or transmit out of the United States anything herein forbidden if he shall first submit the same to the President, or to such officer as the President may direct, and shall obtain the license or consent of the President, under such rules and regulations, and with such exemptions, as shall be prescribed by the President.

(d) Whenever, during the present war, the President shall deem that the public safety demands it, he may cause to be censored under such rules and regulations as he may from time to time establish, communications by mail, cable, radio, or other means of transmission passing between the United States and any foreign country he may from time to time specify, or which may be carried by any vessel or other means of transportation touching at any port, place, or territory of the United States and bound to or from any foreign country. Any person who willfully evades or attempts to evade the submission of any such communication to such censorship or willfully uses or attempts to use any code or other device for the purpose of concealing from such censorship the intended meaning of such communication shall be punished as provided in section sixteen of this Act.

SEC. 4. (a) Every enemy or ally of enemy insurance or reinsurance company, and every enemy or ally of enemy, doing business within the United States through an agency or branch office, or otherwise, may, within thirty days after the passage of this Act, apply to the President for a license to continue to do business; and, within thirty days after such application, the President may enter an order either granting or refusing to grant such license. The license, if granted, may be temporary or otherwise, and for such period of time, and may contain such provisions and conditions regulating the business, agencies, managers and trustees and the control and disposition of the funds of the company, or of such enemy or ally of enemy, as the President shall deem necessary for the safety of the United States; and any license granted hereunder may be revoked or regranted or renewed in such manner and at such times as the President shall determine: *Provided, however*, That reasonable notice of his intent to refuse to grant a license or to revoke a license granted to any reinsurance company shall be given by him to all insurance companies

incorporated within the United States and known to the President to be doing business with such reinsurance company: *Provided further*, That no insurance company, organized within the United States, shall be obligated to continue any existing contract, entered into prior to the beginning of the war, with any enemy or ally of enemy insurance or reinsurance company, but any such company may abrogate and cancel any such contract by serving thirty days' notice in writing upon the President of its election to abrogate such contract.

For a period of thirty days after the passage of this Act, and further pending the entry of such order by the President, after application made by any enemy or ally of enemy insurance or reinsurance company, within such thirty days as above provided, the provisions of the President's proclamation of April sixth, nineteen hundred and seventeen, relative to agencies in the United States of certain insurance companies, as modified by the provisions of the President's proclamation of July thirteenth, nineteen hundred and seventeen, relative to marine and war-risk insurance, shall remain in full force and effect so far as it applies to such German insurance companies, and the conditions of said proclamation of April sixth, nineteen hundred and seventeen, as modified by said proclamation of July thirteenth, nineteen hundred and seventeen, shall also during said period of thirty days after the passage of this Act, and pending the order of the President as herein provided, apply to any enemy or ally of enemy insurance or reinsurance company, anything in this Act to the contrary notwithstanding. It shall be unlawful for any enemy or ally of enemy insurance or reinsurance company, to whom license is granted, to transmit out of the United States any funds belonging to or held for the benefit of such company or to use any such funds as the basis for the establishment directly or indirectly of any credit within or outside of the United States to, or for the benefit of, or on behalf of, or on account of, an enemy or ally of enemy.

For a period of thirty days after the passage of this Act, and further pending the entry of such order by the President, after application made within such thirty days by any enemy or ally of enemy, other than an insurance or reinsurance company as above provided, it shall be lawful for such enemy or ally of enemy to continue to do business in this country and for any person to trade with, to, from, for, on account of, on behalf of or for the benefit of such enemy or ally of enemy, anything in this Act to the contrary notwithstanding: *Provided, however*, That the provisions of sections three and sixteen hereof shall apply to any act or attempted act of transmission or transfer of money or other property out of the United States and to the use or attempted use of such money or property as the basis for the establishment of any credit within or outside of the United States to, or for the benefit of, or on behalf of, or on account of, an enemy or ally of enemy.

If no license is applied for within thirty days after the passage of this Act, or if a license shall be refused to any enemy or ally of enemy, whether insurance or reinsurance company or other person, making application, or if any license granted shall be revoked by the President, the provisions of sections three and sixteen hereof shall forthwith apply to all trade or to any attempt to trade with, to, from, for, by, on account of, or on behalf of, or for the benefit of such company or other

person: *Provided, however*, That after such refusal or revocation, anything in this Act to the contrary notwithstanding, it shall be lawful for a policyholder or for an insurance company, not an enemy or ally of enemy, holding insurance or having effected reinsurance in or with such enemy or ally of enemy insurance or reinsurance company, to receive payment of, and for such enemy or ally of enemy insurance or reinsurance company to pay any premium, return premium, claim, money, security, or other property due or which may become due on or in respect to such insurance or reinsurance in force at the date of such refusal or revocation of license; and nothing in this Act shall vitiate or nullify then existing policies or contracts of insurance or reinsurance, or the conditions thereof; and any such policyholder or insurance company, not an enemy or ally of enemy, having any claim to or upon money or other property of the enemy or ally of enemy insurance or reinsurance company in the custody or control of the alien property custodian, hereinafter provided for, or of the Treasurer of the United States, may make application for the payment thereof and may institute suit as provided in section nine hereof.

(b) That, during the present war, no enemy, or ally of enemy, and no partnership of which he is a member or was a member at the beginning of the war, shall for any purpose assume or use any name other than that by which such enemy or partnership was ordinarily known at the beginning of the war, except under license from the President.

Whenever, during the present war, in the opinion of the President the public safety or public interest requires, the President may prohibit any or all foreign insurance companies from doing business in the United States, or the President may license such company or companies to do business upon such terms as he may deem proper.

SEC. 5. (a) That the President, if he shall find it compatible with the safety of the United States and with the successful prosecution of the war, may, by proclamation suspend the provisions of this Act so far as they apply to an ally of enemy, and he may revoke or renew such suspension from time to time; and the President may grant licenses, special or general, temporary or otherwise, and for such period of time and containing such provisions and conditions as he shall prescribe, to any person or class of persons to do business as provided in subsection (a) of section four hereof, and to perform any act made unlawful without such license in section three hereof, and to file and prosecute applications under subsection (b) of section ten hereof; and he may revoke or renew such licenses from time to time, if he shall be of opinion that such grant or revocation or renewal shall be compatible with the safety of the United States and with the successful prosecution of the war; and he may make such rules and regulations, not inconsistent with law, as may be necessary and proper to carry out the provisions of this Act; and the President may exercise any power or authority conferred by this Act through such officer or officers as he shall direct.

If the President shall have reasonable cause to believe that any act is about to be performed in violation of section three hereof he shall have authority to order the postponement of the performance of such act for a period not exceeding ninety days, pending investigation of the facts by him.

(b)[1] (1) During the time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, and under such rules and regulations as he may prescribe, by means of instructions, licenses, or otherwise—

(A) investigate, regulate, or prohibit, any transactions in foreign exchange, tranfers of credit or payments between, by, through, or to any banking institution, and the importing, exporting, hoarding, melting, or earmarking of gold or silver coin or bullion, currency or securities, and

(B) investigate, regulate, direct and compel, nullify, void, prevent or prohibit, any acquisition holding, withholding, use, transfer, withdrawal, transportation, importation or exportation of, or dealing in, or exercising any right, power, or privilege with respect to, or transactions involving, any property in which any foreign country or a national thereof has any interest,

by any person, or with respect to any property, subject to the jurisdiction of the United States; and any property or interest of any foreign country or national thereof shall vest, when, as, and upon the terms, directed by the President, in such agency or person as may be designated from time to time by the President, and upon such terms and conditions as the President may prescribe such interest or property shall be held, used, administered, liquidated, sold, or otherwise dealt with in the interest of and for the benefit of the United States, and such designated agency or person may perform any and all acts incident to the accomplishment or furtherance of these purposes; and the President shall, in the manner hereinabove provided, require any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, complete information relative to any act or transaction referred to in this subdivision either before, during, or after the completion thereof, or relative to any interest in foreign property, or relative to any property in which any foreign country or any national thereof has or has had any interest, or as may be otherwise necessary to enforce the provisions of this subdivision, and in any case in which a report could be required, the President may, in the manner hereinabove provided, require the production, or if necessary to the national security or defense, the seizure, of any books of account, records, contracts, letters, memoranda, or other papers, in the custody or control of such person; and the President may, in the manner hereinabove provided, take other and further measures not inconsistent herewith for the enforcement of this subdivision.

(2) Any payment, conveyance, transfer, assignment, or delivery of property or interest therein, made to or for the account of the United States, or as otherwise directed, pursuant to this subdivision or any rule, regulation, instruction, or direction issued hereunder shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same; and no person shall be held liable in any court for or in respect to

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[1] Subsection (b) amended by Public Law 217, 65th Cong., approved Sept. 24, 1918 (40 Stat. 965), by Public Law 1, 73d Cong., approved March 9, 1933 (48 Stat. 1), by Public Resolution 69, 76th Cong., approved May 7, 1940 (54 Stat. 179), and by the First War Powers Act, 1941, Public Law 354, 77th Cong., approved December 18, 1941 (55 Stat. 839). See section 302 of the First War Powers Act, 1941, printed at page 122 of this booklet.

anything done or omitted in good faith in connection with the administration of, or in pursuance of and in reliance on, this subdivision, or any rule, regulation, instruction, or direction issued hereunder.

(3) As used in this subdivision the term "United States" means the United States and any place subject to the jurisdiction thereof, including the Philippine Islands, and the several courts of first instance of the Commonwealth of the Philippine Islands shall have jurisdiction in all cases, civil or criminal, arising under this subdivision in the Philippine Islands and concurrent jurisdiction with the district courts of the United States of all cases, civil or criminal, arising upon the high seas: *Provided, however*, That the foregoing shall not be construed as a limitation upon the power of the President, which is hereby conferred, to prescribe from time to time, definitions, not inconsistent with the purposes of this subdivision, for any or all of the terms used in this subdivision. Whoever willfully violates any of the provisions of this subdivision or of any license, order, rule or regulation issued thereunder, shall, upon conviction, be fined not more than $10,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both. As used in this subdivision the term "person" means an individual, partnership, association, or corporation.

SEC. 6. That the President is authorized to appoint, prescribe the duties of, and fix the salary (not to exceed $5,000 per annum) of an official to be known as the alien property custodian, who shall be empowered to receive all money and property in the United States due or belonging to an enemy, or ally of enemy, which may be paid, conveyed, transferred, assigned, or delivered to said custodian under the provisions of this Act; and to hold, administer, and account for the same under the general direction of the President and as provided in this Act.[2] The alien property custodian shall give such bond or bonds, and in such form and amount, and with such security as the President shall prescribe. The President may further employ in the District of Columbia and elsewhere and fix the compensation of such clerks, attorneys, investigators, accountants, and other employees as he may find necessary for the due administration of the provisions of this Act: *Provided*, That such clerks, investigators, accountants, and other employees shall be appointed from lists of eligibles to be supplied by the Civil Service Commission and in accordance with the civil-service law: *Provided further*, That the President shall cause a detailed report to be made to Congress on the first day of January of each year of all proceedings had under this Act during the year preceding.[3] Such report shall contain a list of all persons appointed or employed, with the salary or compensation paid to each, and a statement of the different kinds of property taken into custody and the disposition made thereof.

SEC. 7. (a) That every corporation incorporated within the United States, and every unincorporated association, or company, or trustee, or trustees within the United States, issuing shares or certificates representing beneficial interests, shall, under such rules and regulations as the President may prescribe and, within sixty days after the passage

[2] See extract from Public Law 529, 78th Cong., printed at page 122 of this booklet.
[3] See section 2 of Public Law 859, 81st Cong., printed at page 128 of this booklet.

of this Act, and at such other times thereafter as the President may require, transmit to the alien property custodian a full list, duly sworn to, of every officer, director, or stockholder known to be, or whom the representative of such corporation, association, company, or trustee has reasonable cause to believe to be an enemy or ally of enemy resident within the territory, or a subject or citizen residing outside of the United States, of any nation with which the United States is at war, or resident within the territory, or a subject or citizen residing outside of the United States, or any ally of any nation with which the United States is at war, together with the amount of stock or shares owned by each such officer, director, or stockholder, or in which he has any interest.

The President may also require a similar list to be transmitted of all stock or shares owned on February third, nineteen hundred and seventeen, by any person now defined as an enemy or ally of enemy, or in which any such person had any interest; and he may also require a list to be transmitted of all cases in which said corporation, association, company, or trustee has reasonable cause to believe that the stock or shares on February third, nineteen hundred and seventeen, were owned or are owned by such enemy or ally of enemy, though standing on the books in the name of another: *Provided, however*, That the name of any such officer, director, or stockholder shall be stricken permanently or temporarily from such list by the alien property custodian when he shall be satisfied that he is not such enemy or ally of enemy.

Any person in the United States who holds or has or shall hold or have custody or control of any property beneficial or otherwise, alone or jointly with others, of, for, or on behalf of an enemy or ally of enemy, or of any person whom he may have reasonable cause to believe to be an enemy or ally of enemy and any person in the United States who is or shall be indebted in any way to an enemy or ally of enemy, or to any person whom he may have reasonable cause to believe to be an enemy or ally of enemy, shall, with such exceptions and under such rules and regulations as the President shall prescribe, and within thirty days after the passage of this Act, or within thirty days after such property shall come within his custody or control, or after such debt shall become due, report the fact to the alien-property custodian by written statement under oath containing such particulars as said custodian shall require. The President may also require a similar report of all property so held, of, for, or on behalf of, and of all debts so owed to, any person now defined as an enemy or ally of enemy, on February third, nineteen hundred and seventeen: *Provided*, That the name of any person shall be stricken from the said report by the alien-property custodian, either temporarily or permanently, when he shall be satisfied that such person is not an enemy or ally of enemy. The President may extend the time for filing the lists or reports required by this section for an additional period not exceeding ninety days.

(b) Nothing in this Act contained shall render valid or legal, or be construed to recognize as valid or legal, any act or transaction constituting trade with, to, from, for or on account of, or on behalf or for the benefit of an enemy performed or engaged in since the beginning of the war and prior to the passage of this Act, or any such act or transaction hereafter performed or engaged in except as authorized hereunder, which would otherwise have been or be void, illegal, or

invalid at law. No conveyance, transfer, delivery, payment, or loan of money or other property, in violation of section three hereof, made after the passage of this Act, and not under license as herein provided shall confer or create any right or remedy in respect thereof; and no person shall by virtue of any assignment, indorsement, or delivery to him of any debt, bill, note, or other obligation or chose in action by, from, or on behalf of, or on account of, or for the benefit of an enemy or ally of enemy have any right or remedy against the debtor, obligor, or other person liable to pay, fulfill, or perform the same unless said assignment, indorsement, or delivery was made prior to the beginning of the war or shall be made under license as herein provided, or unless, if made after the beginning of the war and prior to the date of passage of this Act, the person to whom the same was made shall prove lack of knowledge and of reasonable cause to believe on his part that the same was made by, from or on behalf of, or on account of, or for the benefit of an enemy or ally of enemy; and any person who knowingly pays, discharges, or satisfies any such debt, note, bill, or other obligation or chose in action shall, on conviction thereof, be deemed to violate section three hereof: *Provided*, That nothing in this Act contained shall prevent the carrying out, completion, or performance of any contract, agreement, or obligation originally made with or entered into by an enemy or ally of enemy where, prior to the beginning of the war and not in contemplation thereof, the interest of such enemy or ally of enemy devolved by assignment or otherwise upon a person not an enemy or ally of enemy, and no enemy or ally of enemy will be benefited by such carrying out, completion, or performance otherwise than by release from obligation thereunder.

Nothing in this Act shall be deemed to prevent payment of money belonging or owing to an enemy or ally of enemy to a person within the United States not an enemy or ally of enemy, for the benefit of such person or of any other person within the United States not an enemy or ally of enemy, if the funds so paid shall have been received prior to the beginning of the war and such payments arise out of transactions entered into prior to the beginning of the war, and not in contemplation thereof: *Provided*, That such payment shall not be made without the license of the President, general or special, as provided in this Act.

Nothing in this Act shall be deemed to authorize the prosecution of any suit or action at law or in equity in any court within the United States by an enemy or ally of enemy prior to the end of the war, except as provided in section ten hereof: *Provided, however*, That an enemy or ally of enemy licensed to do business under this Act may prosecute and maintain any such suit or action so far as the same arises solely out of the business transacted within the United States under such license and so long as such license remains in full force and effect: *And provided further*, That an enemy or ally of enemy may defend by counsel any suit in equity or action at law which may be brought against him.

Receipt of notice from the President to the effect that he has reasonable ground to believe that any person is an enemy or ally of enemy shall be prima facie defense to any one receiving the same, in any suit or action at law or in equity brought or maintained, or to any right or set-off or recoupment asserted by, such person and based on

failure to complete or perform since the beginning of the war any contract or other obligation. In any prosecution under section sixteen hereof, proof of receipt of notice from the President to the effect that he has reasonable cause to believe that any person is an enemy or ally of enemy shall be prima facie evidence that the person receiving such notice has reasonable cause to believe such other person to be an enemy or ally of enemy within the meaning of section three hereof.

(c)[4] If the President shall so require any money or other property including (but not thereby limiting the generality of the above) patents, copyrights, applications therefor, and rights to apply for the same, trade marks, choses in action, and rights and claims of every character and description owing or belonging to or held for, by, or on account of, or on behalf of, or for the benefit of, an enemy or ally of enemy not holding a license granted by the President hereunder, which the President after investigation shall determine is so owing or so belongs or is so held, shall be conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian, or the same may be seized by the Alien Property Custodian; and all property thus acquired shall be held, administered and disposed of as elsewhere provided in this Act.

Any requirement made pursuant to this Act, or a duly certified copy thereof, may be filed, registered, or recorded in any office for the filing, registering, or recording of conveyances, transfers, or assignments of any such property or rights as may be covered by such requirement (including the proper office for filing, registering, or recording conveyances, transfers, or assignments of patents, copyrights, trademarks, or any rights therein or any other rights); and if so filed, registered, or recorded shall impart the same notice and have the same force and effect as a duly executed conveyance, transfer, or assignment to the Alien Property Custodian so filed, registered, or recorded.

Whenever any such property shall consist of shares of stock or other beneficial interest in any corporation, association, or company or trust, it shall be the duty of the corporation, association, or company or trustee or trustees issuing such shares or any certificates or other instruments representing the same or any other beneficial interest to cancel upon its, his, or their books all shares of stock or other beneficial interest standing upon its, his, or their books in the name of any person or persons, or held for, on account of, or on behalf of, or for the benefit of any person or persons who shall have been determined by the President, after investigation, to be an enemy or ally of enemy, and which shall have been required to be conveyed, transferred, assigned, or delivered to the Alien Property Custodian or seized by him, and in lieu thereof to issue certificates or other instruments for such shares or other beneficial interest to the Alien Property Custodian or otherwise, as the Alien Property Custodian shall require.

The sole relief and remedy of any person having any claim to any money or other property heretofore or hereafter conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian, or required so to be, or seized by him shall be that provided by the terms of this Act, and in the event of sale or other disposition of such property by the Alien Property Custodian, shall be limited to and

[4] Subsection (c) amended by Public Law 233, 65th Cong., approved November 4, 1918 (40 Stat. 1020).

enforced against the net proceeds received therefrom and held by the Alien Property Custodian or by the Treasurer of the United States.

(d) If not required to pay, convey, transfer, assign, or deliver under the provisions of subsection (c) hereof, any person not an enemy or ally of enemy who owes to, or holds for, or on account of, or on behalf of, or for the benefit of an enemy or of an ally of enemy not holding a license granted by the President hereunder, any money or other property, or to whom any obligation or form of liability to such enemy or ally of enemy is presented for payment, may, at his option, with the consent of the President, pay, convey, transfer, assign, or deliver to the alien property custodian said money or other property under such rules and regulations as the President shall prescribe.

(e) No person shall be held liable in any court for or in respect to anything done or omitted in pursuance of any order, rule, or regulation made by the President under the authority of this Act.

Any payment, conveyance, transfer, assignment, or delivery of money or property made to the alien property custodian hereunder shall be a full acquittance and discharge for all purposes of the obligation of the person making the same to the extent of same. The alien property custodian and such other persons as the President may appoint shall have power to execute, acknowledge, and deliver any such instrument or instruments as may be necessary or proper to evidence upon the record or otherwise such acquittance and discharge, and shall, in case of payment to the alien property custodian of any debt or obligation owed to an enemy or ally of enemy, deliver up any notes, bonds, or other evidences of indebtedness or obligation, or any security therefor in which such enemy or ally of enemy had any right or interest that may have come into the possession of the alien property custodian, with like effect as if he or they, respectively, were duly appointed by the enemy or ally of enemy, creditor, or obligee. The President shall issue to every person so appointed a certificate of the appointment and authority of such person, and such certificate shall be received in evidence in all courts within the United States. Whenever any such certificate of authority shall be offered to any registrar, clerk, or other recording officer, Federal or otherwise, within the United States, such officer shall record the same in like manner as a power of attorney, and such record or a duly certified copy thereof shall be received in evidence in all courts of the United States or other courts within the United States.

SEC. 8. (a) That any person not an enemy or ally of enemy holding a lawful mortgage, pledge, or lien, or other right in the nature of security in property of an enemy or ally of enemy which, by law or by the terms of the instrument creating such mortgage, pledge, or lien, or right, may be disposed of on notice or presentation or demand, and any person not an enemy or ally of enemy who is a party to any lawful contract with an enemy or ally of enemy, the terms of which provide for a termination thereof upon notice or for acceleration of maturity on presentation or demand, may continue to hold said property, and, after default, may dispose of the property in accordance with law or may terminate or mature such contract by notice or presentation or demand served or made on the alien prop-

erty custodian in accordance with the law and the terms of such instrument or contract and under such rules and regulations as the President shall prescribe; and such notice and such presentation and demand shall have, in all respects, the same force and effect as if duly served or made upon the enemy or ally of enemy personally: *Provided*, That no such rule or regulation shall require that notice or presentation or demand shall be served or made in any case in which, by law or by the terms of said instrument or contract, no notice, presentation, or demand was, prior to the passage of this Act, required; and that in case where, by law or by the terms of such instrument or contract, notice is required, no longer period of notice shall be required: *Provided further*, That if, on any such disposition of property, a surplus shall remain after the satisfaction of the mortgage, pledge, lien, or other right in the nature of security, notice of that fact shall be given to the President pursuant to such rules and regulations as he may prescribe, and such surplus shall be held subject to his further order.

(b) That any contract entered into prior to the beginning of the war between any citizen of the United States or any corporation organized within the United States, and an enemy or ally of an enemy, the terms of which provide for the delivery, during or after any war in which a present enemy or ally of enemy nation has been or is now engaged, of anything produced, mined, or manufactured in the United States, may be abrogated by such citizen or corporation by serving thirty days' notice in writing upon the alien property custodian of his or its election to abrogate such contract.

(c) The running of any statute of limitations shall be suspended with reference to the rights or remedies on any contract or obligation entered into prior to the beginning of the war between parties neither of whom is an enemy or ally of enemy, and containing any promise to pay or liability for payment which is evidenced by drafts or other commercial paper drawn against or secured by funds or other property situated in an enemy or ally of enemy country, and no suit shall be maintained on any such contract or obligation in any court within the United States until after the end of the war, or until the said funds or property shall be released for the payment or satisfaction of such contract or obligation: *Provided, however*, That nothing herein contained shall be construed to prevent the suspension of the running of the statute of limitations in all other cases where such suspension would occur under existing law.

SEC. 9.[5] That any person not an enemy or ally of the enemy claiming any interest, right, or title in any money or other property which may have been conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, or to whom any debt may be owing from an enemy or ally of enemy whose property or any part thereof shall have been conveyed, transferred, assigned, delivered, or

[5] Section 9 amended by Public Law 5, 66th Cong., approved July 11, 1919 (41 Stat. 35), by Public Law 252, 66th Cong., approved June 5, 1920 (41 Stat. 977), by Public Law 332, 66th Cong., approved February 27, 1921 (41 Stat. 1147), by Public Law 115, 67th Cong., approved December 21, 1921 (42 Stat. 351), by Public Law 372, 67th Cong., approved December 27, 1922 (42 Stat. 1065), by Public Law 536, 67th Cong., approved March 4, 1923 (42 Stat. 1511), by Public Law 188, 69th Cong., approved May 7, 1926 (44 Stat. 406), by sections 11, 12, 13, 14, and 20 of the Settlement of War Claims Act of 1928 (45 Stat. 270–273, 277), and by Public Law 347, 75th Cong., approved August 24, 1937 (50 Stat. 748).

paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States may file with the said custodian a notice of his claim under oath and in such form and containing such particulars as the said custodian shall require; and the President, if application is made therefor by the claimant, may order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine said claimant is entitled: *Provided*, That no such order by the President shall bar any person from the prosecution of any suit at law or in equity against the claimant to establish any right, title, or interest which he may have in such money or other property. If the President shall not so order within sixty days after the filing of such application or if the claimant shall have filed the notice as above required and shall have made no application to the President, said claimant may institute a suit in equity in the Supreme Court of the District of Columbia or in the district court of the United States for the district in which such claimant resides, or, if a corporation, where it has its principal place of business (to which suit the Alien Property Custodian or the Treasurer of the United States, as the case may be, shall be made a party defendant), to establish the interest, right, title, or debt so claimed, and if so established the court shall order the payment, conveyance, transfer, assignment, or delivery to said claimant of the money or other property so held by the Alien Property Custodian or by the Treasurer of the United States or the interest therein to which the court shall determine said claimant is entitled. If suit shall be so instituted, then such money or property shall be retained in the custody of the Alien Property Custodian, or in the Treasury of the United States, as provided in this Act, and until any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied by payment or conveyance, transfer, assignment, or delivery by the defendant, or by the Alien Property Custodian, or Treasurer of the United States on order of the court, or until final judgment or decree shall be entered against the claimant or suit otherwise terminated.

(b) In respect of all money or other property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or seized by him hereunder and held by him or by the Treasurer of the United States, if the President shall determine that the owner thereof at the time such money or other property was required to be so conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian or at the time when it was voluntarily delivered to him or was seized by him was—

(1) A citizen or subject of any nation or State or free city other than Germany or Austria or Hungary or Austria-Hungary, and is at the time of the return of such money or other property hereunder a citizen or subject of any such nation or State or free city; or

(2) A woman who, at the time of her marriage, was a subject or citizen of a nation which has remained neutral in the war, or of a nation which was associated with the United States in the prosecution of said war, and who, prior to April 6, 1917, intermarried with a subject or citizen of Germany or Austria-Hungary and that the money or other property concerned was not acquired by such woman,

either directly or indirectly, from any subject or citizen of Germany or Austria-Hungary subsequent to January 1, 1917; or

(3) A woman who at the time of her marriage was a citizen of the United States, and who prior to April 6, 1917, intermarried with a subject or citizen of Germany or Austria-Hungary, and that the money or other property concerned was not acquired by such woman, either directly or indirectly, from any subject or citizen of Germany or Austria-Hungary subsequent to January 1, 1917; or who was a daughter of a resident citizen of the United States and herself a resident or former resident thereof, or the minor daughter or daughters of such woman, she being deceased; or

(3A) An individual who was at such time a citizen or subject of Germany, Austria, Hungary, or Austria-Hungary, or not a citizen or subject of any nation, state or free city, and that the money or other property concerned was acquired by such individual while a bona fide resident of the United States, and that such individual, on January 1, 1926, and at the time of the return of the money or other property, shall be a bona fide resident of the United States; or

(3B) Any individual who at such time was not a subject or citizen of Germany, Austria, Hungary, or Austria-Hungary, and who is now a citizen or subject of a neutral or allied country: *Provided, however*, That nothing contained herein shall be construed as limiting or abrogating any existing rights of an individual under the provisions of this Act; or

(4) A citizen or subject of Germany or Austria or Hungary or Austria-Hungary and was at the time of the severance of diplomatic relations between the United States and such nations, respectively, accredited to the United States as a diplomatic or consular officer of any such nation, or the wife or minor child of such officer, and that the money or other property concerned was within the territory of the United States by reason of the service of such officer in such capacity; or

(5) A citizen or subject of Germany or Austria-Hungary, who by virtue of the provisions of sections 4067, 4068, 4069, and 4070 of the Revised Statutes, and of the proclamations and regulations thereunder, was transferred, after arrest, into the custody of the War Department of the United States for detention during the war and is at the time of the return of his money or other property hereunder living within the United States; or

(6) A partnership, association, or other unincorporated body of individuals outside the United States, or a corporation incorporated within any country other than the United States, and was entirely owned at such time by subjects or citizens of nations, States, or free cities other than Germany or Austria or Hungary or Austria-Hungary and is so owned at the time of the return of its money or other property hereunder; or

(7) The Government of Bulgaria or Turkey, or any political or municipal subdivision thereof; or

(8) The Government of Germany or Austria or Hungary or Austria-Hungary, and that the money or other property concerned was the diplomatic or consular property of such Government; or

(9) An individual who was at such time a citizen or subject of Germany, Austria, Hungary, or Austria-Hungary, or who is not a

citizen or subject of any nation, State, or free city, and that such money or other property, or the proceeds thereof, if the same has been converted, does not exceed in value the sum of $10,000, or although exceeding in value the sum of $10,000 is nevertheless susceptible of division, and the part thereof to be returned hereunder does not exceed in value the sum of $10,000: *Provided*, That an individual shall not be entitled, under this paragraph, to the return of any money or other property owned by a partnership, association, unincorporated body of individuals, or corporation at the time it was conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian, or seized by him hereunder; or

(10) A partnership, association, other unincorporated body of individuals, or corporation, and that it is not otherwise entitled to the return of its money or other property, or any part thereof, under this section, and that such money or other property, or the proceeds thereof, if the same has been converted, does not exceed in value the sum of $10,000, or although exceeding in value the sum of $10,000, is nevertheless susceptible of division, and the part thereof to be returned hereunder does not exceed in value the sum of $10,000; or

(11) A partnership, association, or other unincorporated body of individuals, having its principal place of business within any country other than Germany, Austria, Hungary, or Austria-Hungary, or a corporation, organized or incorporated within any country other than Germany, Austria, Hungary, or Austria-Hungary, and that the control of, or more than 50 per centum of the interests or voting power in, any such partnership, association, other unincorporated body of individuals, or corporation, was at such time, and is at the time of the return of any money or other property, vested in citizens or subjects of nations, States, or free cities other than Germany, Austria, Hungary, or Austria-Hungary: *Provided, however*, That this subsection shall not affect any rights which any citizen or subject may have under paragraph (1) of this subsection; or

(12) A partnership, association, or other unincorporated body of individuals, or a corporation, and was entirely owned at such time by subjects or citizens of nations, States, or free cities other than Austria or Hungary or Austria-Hungary and is so owned at the time of the return of its money or other property, and has filed the written consent provided for in subsection (m); or

(13) A partnership, association, or other unincorporated body of individuals, having its principal place of business at such time within any country other than Austria, Hungary, or Austria-Hungary, or a corporation organized or incorporated within any country other than Austria, Hungary, or Austria-Hungary, and that the written consent provided for in subsection (m) has been filed; or

(14) An individual who at such time was a citizen or subject of Germany or who, at the time of the return of any money or other property, is a citizen or subject of Germany or is not a citizen or subject of any nation, State, or free city, and that the written consent provided for in subsection (m) has been filed; or

(15) The Austro-Hungarian Bank, except that the money or other property thereof shall be returned only to the liquidators thereof; or

(16) An individual, partnership, association, or other unincorporated body of individuals, or a corporation, and that the written con-

sent provided for in subsection (m) has been filed, and that no suit or proceeding against the United States or any agency thereof is pending in respect of such return, and that such individual has filed a written waiver renouncing on behalf of himself, his heirs, successors, and assigns any claim based upon the fact that at the time of such return he was in fact entitled to such return under any other provision of this Act; or

(17) A partnership, association, or other unincorporated body of individuals, or a corporation, and was entirely owned at such time by citizens of Austria and is so owned at the time of the return of its money or other property; or

(18) A partnership, association, or other unincorporated body of individuals, having its principal place of business at such time within Austria, or a corporation organized or incorporated within Austria; or

(19) An individual who at such time was a citizen of Austria or who, at the time of the return of any money or other property, is a citizen of Austria; or

(20) A partnership, association, or other unincorporated body of individuals, or a corporation, and was entirely owned at such time by citizens of Hungary and is so owned at the time of the return of its money or other property; or

(21) A partnership, association, or other unincorporated body of individuals, having its principal place of business at such time within Hungary, or a corporation organized or incorporated within Hungary; or

(22) An individual who at such time was a citizen of Hungary or who, at the time of the return of any money or other property, is a citizen of Hungary;—

Then the President, without any application being made therefor, may order the payment, conveyance, transfer, assignment, or delivery of such money or other property held by the Alien Property Custodian or by the Treasurer of the United States, or of the interest therein to which the President shall determine such person entitled, either to the said owner or to the person by whom said property was conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian: *Provided*, That no person shall be deemed or held to be a citizen or subject of Germany or Austria or Hungary or Austria-Hungary for the purposes of this section, even though he was such citizen or subject at the time first specified in this subsection, if he has become or shall become, ipso facto or through exercise of option, a citizen or subject of any nation or State or free city other than Germany, Austria, or Hungary, (first) under the terms of such treaties of peace as have been or may be concluded subsequent to November 11, 1918, between Germany or Austria or Hungary (of the one part) and the United States and/or three or more of the following-named powers: The British Empire, France, Italy, and Japan (of the other part), or (second) under the terms of such treaties as have been or may be concluded in pursuance of the treaties of peace aforesaid between any nation, State, or free city (of the one part) whose territories, in whole or in part, on August 4, 1914, formed a portion of the territory of Germany or Austria-Hungary and the United States and/or three or more of the following-named powers: The British Empire, France, Italy, and Japan (of the other part). For

the purposes of this section any citizen or subject of a State or free city which at the time of the proposed return of money or other property of such citizen or subject hereunder forms a part of the territory of any one of the following nations: Germany, Austria, or Hungary, shall be deemed to be a citizen or subject of such nation. And the receipt of the said owner or of the person by whom said money or other property was conveyed, transferred, assigned, delivered, or paid over to the Alien Property Custodian shall be a full acquittance and discharge of the Alien Property Custodian or the Treasurer of the United States, as the case may be, and of the United States in respect to all claims of all persons heretofore or hereafter claiming any right, title, or interest in said money or other property, or compensation or damages arising from the capture of such money or other property by the President or the Alien Property Custodian: *Provided further, however*, That except as herein provided no such action by the President shall bar any person from the prosecution of any suit at law or in equity to establish any right, title, or interest which he may have therein.

(c) Any person whose money or other property the President is authorized to return under the provisions of subsection (b) hereof may file notice of claim for the return of such money or other property, as provided in subsection (a) hereof, and thereafter may make application to the President for allowance of such claim and/or may institute suit in equity to recover such money or other property, as provided in said subsection, and with like effect. The President or the court, as the case may be, may make the same determinations with respect to citizenship and other relevant facts that the President is authorized to make under the provisions of subsection (b) hereof.

(d) Whenever an individual, deceased, would have been entitled, if living, to the return of any money or other property without filing the written consent provided for in subsection (m), then his legal representative may proceed for the return of such money or other property in the same manner as such individual might proceed if living, and such money or other property may be returned to such legal representative without requiring the appointment of an administrator, or an ancillary administrator, by a court in the United States, or to any such ancillary administrator, for distribution directly to the persons entitled thereto. Return in accordance with the provisions of this subsection may be made in any case where an application or court proceeding by any legal representative, under the provisions of this subsection before its amendment by the Settlement of War Claims Act of 1928, is pending and undetermined at the time of the enactment of such Act. All bonds or other security given under the provisions of this subsection before such amendment shall be canceled or released and all sureties thereon discharged.

(e) No money or other property shall be returned nor any debt allowed under this section to any person who is a citizen or subject of any nation which was associated with the United States in the prosecution of the war, unless such nation in like case extends reciprocal rights to citizens of the United States: *Provided*, That any arrangement made by a foreign nation for the release of money and other property of American citizens and certified by the Secretary of State to the Attorney General as fair and the most advantageous

arrangement obtainable shall be regarded as meeting this requirement; nor in any event shall a debt be allowed under this section unless it was owing to and owned by the claimant prior to October 6, 1917, and as to claimants other than citizens of the United States unless it arose with reference to the money or other property held by the Alien Property Custodian or Treasurer of the United States hereunder; nor shall a debt be allowed under this section unless notice of the claim has been filed, or application therefor has been made, prior to the date of the enactment of the Settlement of War Claims Act of 1928.

(f) Except as herein provided, the money or other property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian, shall not be liable to lien, attachment, garnishment, trustee process, or execution, or subject to any order or decree of any court.

(g) Whenever an individual, deceased, would have been entitled, if living, to the return of any money or other property upon filing the written consent provided for in subsection (m), then his legal representative may proceed for the return of such money or other property in the same manner as such individual might proceed if living, and such money or other property may be returned, upon filing the written consent provided for in subsection (m), to such legal representative without requiring the appointment of an administrator, or an ancillary administrator, by a court in the United States, or to any such ancillary administrator, for distribution to the persons entitled thereto. This subsection shall not be construed as extinguishing or diminishing any right which any citizen of the United States may have had under this subsection prior to its amendment by the Settlement of War Claims Act of 1928 to receive in full his interest in the property of any individual dying before such amendment.

(h) The aggregate value of the money or other property returned under paragraphs (9) and (10) of subsection (b) to any one person, irrespective of the number of trusts involved, shall in no case exceed $10,000.

(i) For the purposes of paragraphs (9) and (10) of subsection (b) of this section accumulated net income, dividends, interest, annuities, and other earnings, shall be considered as part of the principal.

(j) The Alien Property Custodian is authorized and directed to return to the person entitled thereto, whether or not an enemy or ally of enemy and regardless of the value, any patent, trade-mark, print, label, copyright, or right therein or claim thereto, which was conveyed, transferred, assigned, or delivered to the Alien Property Custodian, or seized by him, and which has not been sold, licensed, or otherwise disposed of under the provisions of this Act, and to return any such patent, trade-mark, print, label, copyright, or right therein or claim thereto, which has been licensed, except that any patent, trade-mark, print, label, copyright, or right therein or claim thereto, which is returned by the Alien Property Custodian and which has been licensed, or in respect of which any contract has been entered into, or which is subject to any lien or encumbrance, shall be returned subject to the license, contract, lien, or encumbrance.

(k) Except as provided in section 27, paragraphs (12) to (22), both inclusive, of subsection (b) of this section shall apply to the proceeds received from the sale, license, or other disposition of any

patent, trade-mark, print, label, copyright, or right therein or claim thereto, conveyed, transferred, assigned, or delivered to the Alien Property Custodian, or seized by him.

(l) This section shall apply to royalties paid to the Alien Property Custodian, in accordance with a judgment or decree in a suit brought under subsection (f) of section 10; but shall not apply to any other money paid to the Alien Property Custodian under section 10.

(m) No money or other property shall be returned under paragraph (12), (13), (14), or (16) of subsection (b) or under subsection (g) or (n) or (to the extent therein provided) under subsection (p), unless the person entitled thereto files a written consent to a postponement of the return of an amount equal to 20 per centum of the aggregate value of such money or other property (at the time, as nearly as may be, of the return) as determined by the Alien Property Custodian, and the investment of such amount in accordance with the provisions of section 25. Such amount shall be deducted from the money to be returned to such person, so far as possible, and the balance shall be deducted from the proceeds of the sale of so much of the property as may be necessary, unless such person pays the balance to the Alien Property Custodian, except that no property shall be so sold prior to the expiration of six years from the date of the enactment of the Settlement of War Claims Act of 1928 without the consent of the person entitled thereto. The amounts so deducted shall be returned to the persons entitled thereto as provided in subsection (f) of section 25. The sale of any such property shall be made in accordance with the provisions of section 12, except that the provisions of such section relating to sales or resales to, or for the benefit of, citizens of the United States shall not be applicable. If such aggregate value of the money or other property to be returned under paragraph (12), (13), (14), or (16) of subsection (b) or under subsection (g) is less than $2,000, then the written consent shall not be required and the money or other property shall be returned in full without the temporary retention and investment of 20 per centum thereof.

(n) In the case of property consisting of stock or other interest in any corporation, association, company, or trust, or of bonded or other indebtedness thereof, evidenced by certificates of stock or by bonds or by other certificates of interest therein or indebtedness thereof, or consisting of dividends or interest or other accruals thereon, certificate or bond or other certificate of interest (but not the actual certificate or bond or other certificate of interest or indebtedness) was conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian, or seized by him, if the President determines that the owner thereof or of any interest therein has acquired such ownership by assignment, transfer, or sale of such certificate or bond or other certificate of interest or indebtedness, (it being the intent of this subsection that such assignment, transfer, or sale shall not be deemed invalid hereunder by reason of such conveyance, transfer, assignment, delivery, or payment to the Alien Property Custodian or seizure by him) and that the written consent provided for in subsection (m) has been filed, then the President may make in respect of such property an order of the same character, upon the same conditions, and with the same effect, as in cases provided for in subsection (b), including the benefits of subsection (c).

(o) The provisions of paragraph (12), (13), (14), (17), (18), (19), (20), (21), or (22) of subsection (b), or of subsection (m) or (n) of this section, and (except to the extent therein provided) the provisions of paragraph (16) of subsection (b), shall not be construed as diminishing or extinguishing any right under any other provision of this Act in force immediately prior to the enactment of the Settlement of War Claims Act of 1928.

(p) The Alien Property Custodian shall transfer the money or other property in the trust of any partnership, association, or other unincorporated body of individuals, or corporation, the existence of which has terminated, to trusts in the names of the persons (including the German Government and members of the former ruling family) who have succeeded to its claim or interest; and the provisions of subsection (a) of this section relating to the collection of a debt (by order of the President or of a court) out of money or other property held by the Alien Property Custodian or the Treasurer of the United States shall be applicable to the debts of such successor and any such debt may be collected out of the money or other property in any of such trusts if not returnable under subsection (a) of this section. Subject to the above provisions as to the collection of debts, each such successor (except the German Government and members of the former ruling family) may proceed for the return of the amount so transferred to his trust, in the same manner as such partnership, association, or other unincorporated body of individuals, or corporation might proceed if still in existence. If such partnership, association, or other unincorporated body of individuals, or corporation, would have been entitled to the return of its money or other property only upon filing the written consent provided for in subsection (m), then the successor shall be entitled to the return under this subsection only upon filing such written consent.

(q) The return of money or other property under paragraph (15), (17), (18), (19), (20), (21), or (22) of subsection (b) (relating to the return to Austrian and Hungarian nationals) shall be subject to the limitations imposed by subsections (d) and (e) of section 7 of the Settlement of War Claims Act of 1928.

SEC. 10. That nothing contained in this Act shall be held to make unlawful any of the following Acts:

(a) [6]

(b) Any citizen of the United States, or any corporation organized within the United States, may, when duly authorized by the President, pay to an enemy or ally of enemy any tax, annuity, or fee which may be required by the laws of such enemy or ally of enemy nation in relation to patents and trade-marks, prints, labels, and copyrights; and any such citizen or corporation may file and prosecute an application for letters patent or for registration of trade-mark, print, label, or copyright in the country of an enemy, or of an ally of enemy after first submitting such application to the President and receiving license so to file and prosecute, and to pay the fees required by law and customary agents' fees, the maximum amount of which in each case shall be subject to the control of the President.

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[6] Subsection (a) repealed by section 13 of Public Law 690, 79th Cong., approved August 8, 1946 (60 Stat. 944).

(c) Any citizen of the United States or any corporation organized within the United States desiring to manufacture, or cause to be manufactured, a machine, manufacture, composition of matter, or design, or to carry on, or to use any trade-mark, print, label or cause to be carried on, a process under any patent or copyrighted matter owned or controlled by an enemy or ally of enemy at any time during the existence of a state of war may apply to the President for a license; and the President is hereby authorized to grant such a license, non-exclusive or exclusive as he shall deem best, provided he shall be of the opinion that such grant is for the public welfare, and that the applicant is able and intends in good faith to manufacture, or cause to be manufactured, the machine, manufacture, composition of matter, or design, or to carry on, or cause to be carried on, the process or to use the trade-mark, print, label, or copyrighted matter. The President may prescribe the conditions of this license, including the fixing of prices of articles and products necessary to the health of the military and naval forces of the United States or the successful prosecution of the war, and the rules and regulations under which such license may be granted and the fee which shall be charged therefor, not exceeding $100, and not exceeding one per centum of the fund deposited as hereinafter provided. Such license shall be a complete defense to any suit at law or in equity instituted by the enemy or ally of enemy owners of the letters patent, trade-mark, print, label or copyright, or otherwise, against the licensee for infringement or for damages, royalty, or other money award on account of anything done by the licensee under such license, except as provided in subsection (f) hereof.

(d) The licensee shall file with the President a full statement of the extent of the use and enjoyment of the license, and of the prices received in such form and at such stated periods (at least annually) as the President may prescribe; and the licensee shall pay at such times as may be required to the alien property custodian not to exceed five per centum of the gross sums received by the licensee from the sale of said inventions or use of the trade-mark, print, label or copyrighted matter, or, if the President shall so order, five per centum of the value of the use of such inventions, trade-marks, prints, labels or copyrighted matter to the licensee as established by the President; and sums so paid shall be deposited by said alien property custodian forthwith in the Treasury of the United States as a trust fund for the said license and for the owner of the said patent, trade-mark, print, label or copyright registration as hereinafter provided, to be paid from the Treasury upon order of the court, as provided in subdivision (f) of this section, or upon the direction of the alien property custodian.

(e) Unless surrendered or terminated as provided in this Act, any license granted hereunder shall continue during the term fixed in the license or in the absence of any such limitation during the term of the patent, trade-mark, print, label, or copyright registration under which it is granted. Upon violation by the licensee of any of the provisions of this Act, or of the conditions of the license, the President may, after due notice and hearing, cancel any license granted by him.

(f) The owner of any patent, trade-mark, print, label, or copyright under which a license is granted hereunder may, after the end of the

war and until the expiration of one year thereafter, file a bill in equity against the licensee in the district court of the United States for the district in which the said licensee resides, or, if a corporation, in which it has its principal place of business (to which suit the Treasurer of the United States shall be made a party), for recovery from the said licensee for all use and enjoyment of the said patented invention, trade-mark, print, label, or copyrighted matter: *Provided, however*, That whenever suit is brought, as above, notice shall be filed with the alien property custodian within thirty days after date of entry of suit: *Provided further*, That the licensee may make any and all defenses which would be available were no license granted. The court on due proceedings had may adjudge and decree to the said owner payment of a reasonable royalty. The amount of said judgment and decree, when final, shall be paid on order of the court to the owner of the patent from the fund deposited by the licensee, so far as such deposit will satisfy said judgment and decree; and the said payment shall be in full or partial satisfaction of said judgment and decree, as the facts may appear; and if, after payment of all such judgments and decrees, there shall remain any balance of said deposit, such balance shall be repaid to the licensee on order of the alien property custodian. If no suit is brought within one year after the end of the war, or no notice is filed as above required, then the licensee shall not be liable to make any further deposits, and all funds deposited by him shall be repaid to him on order of the alien property custodian. Upon entry of suit and notice filed as above required, or upon repayment of funds as above provided, the liability of the licensee to make further reports to the President shall cease.

If suit is brought as above provided, the court may, at any time, terminate the license, and may, in such event, issue an injunction to restrain the licensee from infringement thereafter, or the court, in case the licensee, prior to suit, shall have made investment of capital based on possession of the license, may continue the license for such period and upon such terms and with such royalties as it shall find to be just and reasonable.

In [7] the case of any such patent, trade-mark, print, label, or copyright, conveyed, assigned, transferred, or delivered to the Alien Property Custodian or seized by him, any suit brought under this subsection, within the time limited therein, shall be considered as having been brought by the owner within the meaning of this subsection, in so far as such suit relates to royalties for the period prior to the sale by the Alien Property Custodian of such patent, trade-mark, print, label, or copyright, if brought either by the Alien Property Custodian or by the person who was the owner thereof immediately prior to the date such patent, trade-mark, print, label, or copyright was seized or otherwise acquired by the Alien Property Custodian.

(g) Any enemy, or ally of enemy, may institute and prosecute suits in equity against any person other than a licensee under this Act to enjoin infringement of letters patent, trade-mark, print, label, and copyrights in the United States owned or controlled by said enemy or ally of enemy, in the same manner and to the extent that he would be entitled so to do if the United States was not at war: *Provided*, That

[7] This paragraph added by section 19 of the Settlement of War Claims Act of 1928 (45 Stat. 277).

no final judgment or decree shall be entered in favor of such enemy or ally of enemy by any court except after thirty days' notice to the alien property custodian. Such notice shall be in writing and shall be served in the same manner as civil process of Federal courts.

(h) All powers of attorney heretofore or hereafter granted by an enemy or ally of enemy to any person within the United States, in so far as they may be requisite to the performance of acts authorized in subsections (a) and (g) of this section, shall be valid.

(i) Whenever the publication of an invention by the granting of a patent may, in the opinion of the President, be detrimental to the public safety or defense, or may assist the enemy or endanger the successful prosecution of the war, he may order that the invention be kept secret and withhold the grant of a patent until the end of the war: *Provided*, That the invention disclosed in the application for said patent may be held abandoned upon it being established before or by the Commissioner of Patents that, in violation of said order, said invention has been published or that an application for a patent therefor has been filed in any other country, by the inventor or his assigns or legal representatives, without the consent or approval of the commissioner or under a license of the President.

When an applicant whose patent is withheld as herein provided and who faithfully obeys the order of the President above referred to shall tender his invention to the Government of the United States for its use, he shall, if he ultimately receives a patent, have the right to sue for compensation in the Court of Claims, such right to compensation to begin from the date of the use of the invention by the Government.

SEC. 11. Whenever during the present war the President shall find that the public safety so requires and shall make proclamation thereof it shall be unlawful to import into the United States from any country named in such proclamation any article or articles mentioned in such proclamation except at such time or times, and under such regulations or orders, and subject to such limitations and exceptions as the President shall prescribe, until otherwise ordered by the President or by Congress: *Provided*, *however*, That no preference shall be given to the ports of one State over those of another.

SEC. 12. That all moneys (including checks and drafts payable on demand) paid to or received by the alien property custodian pursuant to this Act shall be deposited forthwith in the Treasury of the United States, and may be invested and reinvested by the Secretary of the Treasury in United States bonds or United States certificates of indebtedness, under such rules and regulations as the President shall prescribe for such deposit, investment, and sale of securities; and as soon after the end of the war as the President shall deem practicable, such securities shall be sold and the proceeds deposited in the Treasury.

All other property of an enemy, or ally of enemy, conveyed, transferred, assigned, delivered, or paid to the alien property custodian hereunder shall be safely held and administered by him except as hereinafter provided; and the President is authorized to designate as a depositary, or depositaries, of property of an enemy or ally of enemy, any bank, or banks, or trust company, or trust companies, or

other suitable depositary or depositaries, located and doing business in the United States. The alien property custodian may deposit with such designated depositary or depositaries, or with the Secretary of the Treasury, any stocks, bonds, notes, time drafts, time bills of exchange, or other securities, or property (except money or checks or drafts payable on demand which are required to be deposited with the Secretary of the Treasury) and such depositary or depositaries shall be authorized and empowered to collect any dividends or interest or income that may become due and any maturing obligations held for the account of such custodian. Any moneys collected on said account shall be paid and deposited forthwith by said depositary or by the alien property custodian into the Treasury of the United States as hereinbefore provided.

The President shall require all such designated depositaries to execute and file bonds sufficient in his judgment to protect property on deposit, such bonds to be conditioned as he may direct.

The [8] alien property custodian shall be vested with all of the powers of a common-law trustee in respect of all property, other than money, which has been or shall be, or which has been or shall be required to be, conveyed, transferred, assigned, delivered, or paid over to him in pursuance of the provisions of this Act, and, in addition thereto, acting under the supervision and direction of the President, and under such rules and regulations as the President shall prescribe, shall have power to manage such property and do any act or things in respect thereof or make any disposition thereof or of any part thereof, by sale or otherwise, and exercise any rights or powers which may be or become appurtenant thereto or to the ownership thereof in like manner as though he were the absolute owner thereof: *Provided*, That any property sold under this Act, except when sold to the United States, shall be sold only to American citizens, at public sale to the highest bidder, after public advertisement of time and place of sale which shall be where the property or a major portion thereof is situated, unless the President stating the reasons therefor, in the public interest shall otherwise determine: *Provided further*, That when sold at public sale, the alien property custodian upon the order of the President stating the reasons therefor, shall have the right to reject all bids and resell such property at public sale or otherwise as the President may direct. Any person purchasing property from the alien property custodian for an undisclosed principal, or for re-sale to a person not a citizen of the United States, or for the benefit of a person not a citizen of the United States, shall be guilty of a misdemeanor, and, upon conviction, shall be subject to a fine of not more than $10,000, or imprisonment for not more than ten years, or both, and the property shall be forfeited to the United States. It shall be the duty of every corporation incorporated within the United States and every unincorporated association, or company, or trustee, or trustees within the United States issuing shares or certificates representing beneficial interests to transfer such shares or certificates upon its, his, or their books into the name of the alien property custodian upon demand, accompanied by the presentation of the certificates which represent such shares or beneficial interests. The alien property custodian shall

[8] This paragraph added by Public Law 109, 65th Cong., approved March 28, 1918 (40 Stat. 459).

forthwith deposit in the Treasury of the United States, as hereinbefore provided, the proceeds of any such property or rights so sold by him.

Any money or property required or authorized by the provisions of this Act to be paid, conveyed, transferred, assigned, or delivered to the alien property custodian shall, if said custodian shall so direct by written order, be paid, conveyed, transferred, assigned, or delivered to the Treasurer of the United States with the same effect as if to the alien property custodian.

After the end of the war any claim of any enemy or of an ally of enemy to any money or other property received and held by the alien property custodian or deposited in the United States Treasury, shall be settled as Congress shall direct: *Provided, however*, That on order of the President as set forth in section nine hereof, or of the court, as set forth in sections nine and ten hereof, the alien property custodian or the Treasurer of the United States, as the case may be, shall forthwith convey, transfer, assign, and pay to the person to whom the President shall so order, or in whose behalf the court shall enter final judgment or decree, any property of an enemy or ally of enemy held by said custodian or by said Treasurer, so far as may be necessary to comply with said order of the President or said final judgment or decree of the court: *And provided further*, That the Treasurer of the United States, on order of the alien property custodian, shall, as provided in section ten hereof, repay to the licensee any funds deposited by said licensee.

SEC. 13. That, during the present war, in addition to the facts required by sections forty-one hundred and ninety-seven, forty-one hundred and ninety-eight, and forty-two hundred of the Revised Statutes, as amended by the Act of June fifteenth, nineteen hundred and seventeen, to be set out in the master's and shipper's manifests before clearance will be issued to vessels bound to foreign ports, the master or person in charge of any vessel, before departure of such vessel from port, shall deliver to the collector of customs of the district wherein such vessel is located a statement duly verified by oath that the cargo is not shipped or to be delivered in violation of this Act, and the owners, shippers, or consignors of the cargo of such vessels shall in like manner deliver to the collector like statement under oath as to the cargo or the parts thereof laden or shipped by them, respectively, which statement shall contain also the names and addresses of the actual consignees of the cargo, or if the shipment is made to a bank or other broker, factor, or agent, the names and addresses of the persons who are the actual consignees on whose account the shipment is made. The master or person in control of the vessel shall, on reaching port of destination of any of the cargo, deliver a copy of the manifest and of the said master's, owner's, shipper's, or consignor's statement to the American consular officer of the district in which the cargo is unladen.

SEC. 14. That, during the present war, whenever there is reasonable cause to believe that the manifest or the additional statements under oath required by the preceding section are false or that any vessel, domestic or foreign, is about to carry out of the United States any property to or for the account or benefit of an enemy, or ally of enemy, or any property or person whose export, taking out, or transport will be in violation of law, the collector of customs for the district in which

such vessel is located is hereby authorized and empowered, subject to review by the President to refuse clearance to any such vessel, domestic or foreign, for which clearance is required by law, and by formal notice served upon the owners, master, or person or persons in command or charge of any domestic vessel for which clearance is not required by law, to forbid the departure of such vessel from the port, and it shall thereupon be unlawful for such vessel to depart.

The collector of customs shall, during the present war, in each case report to the President the amount of gold or silver coin or bullion or other moneys of the United States contained in any cargo intended for export. Such report shall include the names and addresses of the consignors and consignees, together with any facts known to the collector with reference to such shipment and particularly those which may indicate that such gold or silver coin or bullion or moneys of the United States may be intended for delivery or may be delivered, directly or indirectly, to an enemy or an ally of enemy.

SEC. 15. That the sum of $450,000 is hereby appropriated, out of any money in the Treasury of the United States not otherwise appropriated, to be used in the discretion of the President for the purpose of carrying out the provisions of this Act during the fiscal year ending June thirtieth, nineteen hundred and eighteen, and for the payment of salaries of all persons employed under this Act, together with the necessary expenses for transportation, subsistence, rental of quarters in the District of Columbia, books of reference, periodicals, stationery, typewriters and exchanges thereof, miscellaneous supplies, printing to be done at the Government Printing Office, and all other necessary expenses not included in the foregoing.

SEC. 16. That whoever shall willfully violate any of the provisions of this Act or of any license, rule, or regulation issued thereunder, and whoever shall willfully violate, neglect, or refuse to comply with any order of the President issued in compliance with the provisions of this Act, shall, upon conviction, be fined not more than $10,000, or, if a natural person, imprisoned for not more than ten years, or both; and the officer, director, or agent of any corporation who knowingly participates in such violation shall be punished by a like fine, imprisoned, or both, and any property, funds, securities, papers, or other articles or documents, or any vessel, together with her tackle, apparel, furniture, and equipment, concerned in such violation shall be forfeited to the United States.

SEC. 17. That the district courts of the United States are hereby given jurisdiction to make and enter all such rules as to notice and otherwise, and all such orders and decrees, and to issue such process as may be necessary and proper in the premises to enforce the provisions of this Act, with a right of appeal from the final order or decree of such court as provided in sections one hundred and twenty-eight and two hundred and thirty-eight of the Act of March third, nineteen hundred and eleven, entitled "An Act to codify, revise, and amend the laws relating to the judiciary."

SEC. 18. That the several courts of first instance in the Philippine Islands and the district court of the Canal Zone shall have jurisdiction of offenses under this Act committed within their respective districts, and concurrent jurisdiction with the district courts of the United States of offenses under this Act committed upon the high seas and of

conspiracies to commit such offenses as defined by section thirty-seven of the Act entitled "An Act to codify, revise, and amend the penal laws of the United States," approved March fourth, nineteen hundred and nine, and the provisions of such section for the purpose of this Act are hereby extended to the Philippine Islands and to the Canal Zone.

SEC. 19. That ten days after the approval of this Act and until the end of the war, it shall be unlawful for any person, firm, corporation, or association, to print, publish, or circulate, or cause to be printed, published, or circulated in any foreign language, any news item, editorial or other printed matter, respecting the Government of the United States, or of any nation engaged in the present war, its policies, international relations, the state or conduct of the war, or any matter relating thereto: *Provided*, That this section shall not apply to any print, newspaper, or publication where the publisher or distributor thereof, on or before offering the same for mailing, or in any manner distributing it to the public, has filed with the postmaster at the place of publication, in the form of an affidavit, a true and complete translation of the entire article containing such matter proposed to be published in such print, newspaper, or publication, and has caused to be printed, in plain type in the English language, at the head of each such item, editorial, or other matter, on each copy of such print, newspaper, or publication, the words "True translation filed with the postmaster at on (naming the post office where the translation was filed, and the date of filing thereof) as required by the Act of (here giving the date of this Act).

Any print, newspaper, or publication in any foreign language which does not conform to the provisions of this section is hereby declared to be nonmailable, and it shall be unlawful for any person, firm, corporation, or association, to transport, carry, or otherwise publish or distribute the same, or to transport, carry or otherwise publish or distribute any matter which is made nonmailable by the provisions of the Act relating to espionage, approved June fifteenth, nineteen hundred and seventeen: *Provided further*, That upon evidence satisfactory to him that any print, newspaper, or publication, printed in a foreign language may be printed, published, and distributed free from the foregoing restrictions and conditions without detriment to the United States in the conduct of the present war, the President may cause to be issued to the printers or publishers of such print, newspaper, or publication, a permit to print, publish, and circulate the issue or issues of their print, newspaper, or publication, free from such restrictions and requirements, such permits to be subject to revocation at his discretion. And the Postmaster General shall cause copies of all such permits and revocations of permits to be furnished to the postmaster of the post office serving the place from which the print, newspaper, or publication, granted the permit is to emanate. All matter printed, published and distributed under permits shall bear at the head thereof in plain type in the English language, the words, "Published and distributed under permit authorized by the Act of (here giving date of this Act), on file at the post office of (giving name of office)."

Any person who shall make an affidavit containing any false statement in connection with the translation provided for in this section shall be guilty of the crime of perjury and subject to the punishment

provided therefor by section one hundred and twenty-five of the Act of March fourth, nineteen hundred and nine, entitled "An Act to codify, revise, and amend the penal laws of the United States," and any person, firm, corporation, or association, violating any other requirement of this section shall, on conviction thereof, be punished by a fine of not more than $500, or by imprisonment of not more than one year, or in the discretion of the court, may be both fined and imprisoned.

SEC. 20.[9] No property or interest or proceeds shall be returned under this Act, nor shall any payment be made or judgment awarded in respect of any property or interest vested in or transferred to the Alien Property Custodian unless a schedule of the fees to be paid to all agents, attorneys at law or in fact, or representatives, for services in connection with such return or payment or judgment, has been furnished to, and approved in accordance with this section by, the President or such officer or agency as he may designate, or the court, as the case may be. In the case of any return of, or the making of any payment in respect of, any such property or interest or proceeds (other than pursuant to an order of a court), the President or such officer or agency as he may designate may make such modifications, if any, as are appropriate, and shall approve such schedule only upon determining that the individual fees do not exceed fair compensation for the services rendered and that the aggregate of the fees does not exceed 10 per centum of the value of such property or interest or proceeds or of such payment. Any person aggrieved by the determination of the President or of such officer or agency as he may designate may petition the district court of the United States for the district in which he resides to review the determination, and shall name the person or agency making the determination a party defendant. The court hearing such petition for review, or a court awarding any judgment in respect of any such property or interest or proceeds, as the case may be, may make such modifications, if any, as are appropriate, and shall approve such schedule only upon determining that the individual fees do not exceed fair compensation for the services rendered, and shall approve an aggregate of fees in excess of 10 per centum of the value of such property or interest or proceeds only upon a finding that there exist special circumstances of unusual hardship which require the payment of such excess. Any person accepting any fee in excess of an amount approved hereunder, or retaining for more than thirty days any portion of a fee, accepted prior to approval hereunder, in excess of the fee as approved, shall be guilty of a violation of this Act.

SEC. 21.[10] That the claim of any naturalized American citizen under the provisions of this Act shall not be denied on the ground of any presumption of expatriation which has arisen against him, under the second sentence of section 2 of the Act entitled "An Act in reference to the expatriation of citizens and their protection abroad," approved March 2, 1907, if he shall give satisfactory evidence to the President, or the court, as the case may be, of his uninterrupted loyalty to the United States during his absence, and that he has returned to the

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[9] Section 20 added by Public Law 536, 67th Cong., approved March 4, 1923 (42 Stat. 1511). Amended by section 9 (c) of the Settlement of War Claims Act of 1928 (45 Stat. 267), and by Public Law 322, 79th Cong., approved March 8, 1946 (60 Stat. 54).

[10] Section 21 added by Public Law 536, 67th Cong., approved March 4, 1923 (42 Stat. 1511).

United States, or that he, although desiring to return, has been prevented from so returning by circumstances beyond his control.

SEC. 22.[11] No person shall be entitled to the return of any property or money under any provision of this Act, or any amendment of this Act, who is a fugitive from justice of the United States or any State or Territory thereof, or the District of Columbia.

SEC. 23.[12] The Alien Property Custodian is directed to pay to the person entitled thereto, from and after March 4, 1923, the net income (including dividends, interest, annuities, and other earnings), accruing and collected thereafter, in respect of any money or property held in trust for such person by the Alien Property Custodian or by the Treasurer of the United States for the account of the Alien Property Custodian, under such rules and regulations as the President may prescribe.

SEC. 24.[13] (a) The Alien Property Custodian is authorized to pay all taxes (including special assessments), heretofore or hereafter lawfully assessed by any body politic against any money or other property held by him or by the Treasurer of the United States under this Act, and to pay the necessary expenses incurred by him or by any depositary for him in securing the possession, collection, or control of any such money or other property, or in protecting or administering the same. Such taxes and expenses shall be paid out of the money or other property against which such taxes are assessed or in respect of which such expenses are incurred, or (if such money or other property is insufficient) out of any other money or property held for the same person, notwithstanding the fact that a claim may have been filed or suit instituted under this Act.

No claim shall be filed with the Alien Property Custodian or allowed by him or by the President of the United States, nor shall any suit be instituted or maintained against the Alien Property Custodian or the Treasurer of the United States, or the United States, under any provisions of law, by any person who was an enemy or ally of enemy as defined in the Trading with the Enemy Act, as amended, and no allowance of any such claim now pending shall be made, nor judgment entered in any such suit heretofore or hereafter instituted, for the recovery of any deduction or deductions, heretofore or hereafter made by the Alien Property Custodian from money or properties, or income therefrom, held by him or by the Treasurer of the United States hereunder, for the general or administrative expenses of the office of the Alien Property Custodian, which deduction or deductions on the collection of any income do not exceed the sum of two per centum of such income or which on the return of any moneys or properties or income therefrom, do not exceed the sum of two per centum of the aggregate value thereof at the time or times as nearly as may be, of such deduction or deductions, or, for the recovery of any deduction or deductions heretofore or hereafter made by the Alien Property Custodian from money or properties or income therefrom held by him or by the Treas-

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[11] Section 22 added by Public Law 536, 67th Cong., approved March 4, 1923 (42 Stat. 1511). Amended by section 16 of the Settlement of War Claims Act of 1928 (45 Stat. 275).

[12] Section 23 added by Public Law 536, 67th Cong., approved March 4, 1923 (42 Stat. 1511). Amended by section 17 of the Settlement of War Claims Act of 1928 (45 Stat. 275).

[13] Section 24 added by Public Law 536, 67th Cong., approved March 4, 1923 (42 Stat. 1511). Amended by section 18 of the Settlement of War Claims Act of 1928 (45 Stat. 276), by Public Law 141, 73d Cong., approved March 28, 1934 (48 Stat. 509), and by Public Law 374, 73d Cong., approved June 18, 1934 (48 Stat. 978). See extract from Public Law 529, 78th Cong., printed at page 122 of this booklet.

of determining the application of any statute of limitations. Debt claims allowable hereunder shall include only those of citizens of the United States or of the Philippine Islands; those of corporations organized under the laws of the United States or any State, Territory, or possession thereof, or the District of Columbia or the Philippine Islands; those of other natural persons who are and have been since the beginning of the war residents of the United States and who have not during the war been interned or paroled pursuant to the Alien Enemy Act (50 U. S. C. 21); and those acquired by the Custodian. Legal representatives (whether or not appointed by a court in the United States) or successors in interest by inheritance, devise, bequest, or operation of law of debt claimants, other than persons who would themselves be disqualified hereunder from allowance of a debt claim, shall be eligible for payment to the same extent as their principals or predecessors would have been.

(b) The Custodian shall fix a date or dates after which the filing of debt claims in respect of any or all debtors shall be barred, and may extend the time so fixed, and shall give at least sixty days' notice thereof by publication in the Federal Register. In no event shall the time extend beyond the expiration of two years from the date of the last vesting in or transfer to the Custodian of any property or interest of a debtor in respect of whose debts the date is fixed, or from the date of enactment of this section, whichever is later. No debt shall be paid prior to the expiration of one hundred and twenty days after publication of the first such notice in respect of the debtor, nor in any event shall any payment of a debt claim be made out of any property or interest or proceeds in respect of which a suit or proceeding pursuant to this Act for return is pending and was instituted prior to the expiration of such one hundred and twenty days.

(c) The Custodian shall examine the claims, and such evidence in respect thereof as may be presented to him or as he may introduce into the record, and shall make a determination, with respect to each claim, of allowance or disallowance, in whole or in part.

(d) Payment of debt claims shall be made only out of such money included in, or received as net proceeds from the sale, use, or other disposition of, any property or interest owned by the debtor immediately prior to its vesting in or transfer to the Alien Property Custodian, as shall remain after deduction of (1) the amount of the expenses of the Office of Alien Property Custodian (including both expenses in connection with such property or interest or proceeds thereof, and such portion as the Custodian shall fix of the other expenses of the Office of Alien Property Custodian), and of taxes, as defined in section 36 hereof, paid by the Custodian in respect of such property or interest or proceeds, and (2) such amount, if any, as the Custodian may establish as a cash reserve for the future payment of such expenses and taxes. If the money available hereunder for the payment of debt claims against the debtor is insufficient for the satisfaction of all claims allowed by the Custodian, ratable payments shall be made in accordance with subsection (g) hereof to the extent permitted by the money available and additional payments shall be made whenever the Custodian shall determine that substantial further money has become available, through liquidation

urer of the United States hereunder, for any and all necessary expenses incurred and actually disbursed by the Alien Property Custodian or by any depositary for him in securing the possession, collection or control of any such money or properties or income therefrom, or in protecting or administering the same, as said general or administrative and other expenses and said aggregate value of returned money or properties or income therefrom have been heretofore or shall be hereafter determined by said Alien Property Custodian.

(b) In the case of income, war-profits, excess-profits, or estate taxes imposed by any Act of Congress, the amount thereof shall, under regulations prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, be computed in the same manner (except as hereinafter in this section provided) as though the money or other property had not been seized by or paid to the Alien Property Custodian, and shall be paid, as far as practicable, in accordance with subsection (a) of this section. Pending final determination of the tax liability the Alien Property Custodian is authorized to return, in accordance with the provisions of this Act, money or other property in any trust in such amounts as may be determined, under regulations prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, to be consistent with the prompt payment of the full amount of the internal-revenue taxes. Notwithstanding the expiration of any period of limitation provided by law, credit or refund of any income, war-profits, or excess-profits tax erroneously or illegally assessed or collected may be made or allowed if claim therefor was filed with the Commissioner of Internal Revenue by the Alien Property Custodian on or before February 15, 1933.

(c) So much of the net income of a taxpayer for the taxable year 1917, or any succeeding taxable year, as represents the gain derived from the sale or exchange by the Alien Property Custodian of any property conveyed, transferred, assigned, delivered, or paid to him, or seized by him, may at the option of the taxpayer be segregated from the net income and separately taxed at the rate of 30 per centum. This subsection shall be applied and the amount of net income to be so segregated shall be determined, under regulations prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury, as nearly as may be in the same manner as provided in section 208 of the Revenue Act of 1926 (relating to capital net gains), but without regard to the period for which the property was held by the Alien Property Custodian before its sale or exchange, and whether or not the taxpayer is an individual.

(d) Any property sold or exchanged by the Alien Property Custodian (whether before or after the date of the enactment of the Settlement of War Claims Act of 1928) shall be considered as having been compulsorily or involuntarily converted, within the meaning of the income, excess-profits, and war-profits tax laws and regulations; and the provisions of such laws and regulations relating to such a conversion shall (under regulations prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury) apply in the case of the proceeds of such sale or exchange. For the purpose of determining whether the proceeds of such conversion have been expended within such time as will entitle the taxpayer

of any such property or interest or otherwise. The Custodian shall not be required through any judgment of any court, levy of execution, or otherwise to sell or liquidate any property or interest vested in or transferred to him, for the purpose of paying or satisfying any debt claim.

(e) If the aggregate of debt claims filed as prescribed does not exceed the money from which, in accordance with subsection (d) hereof, payment may be made, the Custodian shall pay each claim to the extent allowed, and shall serve by registered mail, on each claimant whose claim is disallowed in whole or in part, a notice of such disallowance. Within sixty days after the date of mailing of the Custodian's determination, any debt claimant whose claim has been disallowed in whole or in part may file in the District Court of the United States for the District of Columbia a complaint for review of such disallowance naming the Custodian as defendant. Such complaint shall be served on the Custodian. The Custodian, within forty-five days after service on him, shall certify and file in said court a transcript of the record of proceedings in the Office of Alien Property Custodian with respect to the claim in question. Upon good cause shown such time may be extended by the court. Such record shall include the claim as filed, such evidence with respect thereto as may have been presented to the Custodian or introduced into the record by him, and the determination of the Custodian with respect thereto, including any findings made by him. The court may, in its discretion, take additional evidence, upon a showing that such evidence was offered to and excluded by the Custodian, or could not reasonably have been adduced before him or was not available to him. The court shall enter judgment affirming, modifying, or reversing the Custodian's determination, and directing payment in the amount, if any, which it finds due.

(f) If the aggregate of debt claims filed as prescribed exceeds the money from which, in accordance with subsection (d) hereof, payment may be made, the Custodian shall prepare and serve by registered mail on all claimants a schedule of all debt claims allowed and the proposed payment to each claimant. In preparing such schedule, the Custodian shall assign priorities in accordance with the provisions of subsection (g) hereof. Within sixty days after the date of mailing of such schedule, any claimant considering himself aggrieved may file in the District Court of the United States for the District of Columbia a complaint for review of such schedule, naming the Custodian as defendant. A copy of such complaint shall be served upon the Custodian and on each claimant named in the schedule. The Custodian, within forty-five days after service on him, shall certify and file in said court a transcript of the record of proceedings in the Office of Alien Property Custodian with respect to such schedule. Upon good cause shown such time may be extended by the court. Such record shall include the claims in question as filed, such evidence with respect thereto as may have been presented to the Custodian or introduced into the record by him, any findings or other determinations made by the Custodian with respect thereto, and the schedule prepared by the Custodian. The court may, in its discretion, take additional evidence, upon a showing that such evidence was offered to and excluded by the Custodian or could not reasonably have been adduced before him or

to the benefits of such laws and regulations relating to such a conversion, the date of the return of the proceeds to the person entitled thereto shall be considered as the date of the conversion.

(e) In case of any internal-revenue tax imposed in respect of property conveyed, transferred, assigned, delivered, or paid to the Alien Property Custodian, or seized by him, and imposed in respect of any period (in the taxable year 1917 or any succeeding taxable year) during which such property was held by him or by the Treasurer of the United States, no interest or civil penalty shall be assessed upon, collected from, or paid by or on behalf of, the taxpayer; nor shall any interest be credited or paid to the taxpayer in respect of any credit or refund allowed or made in respect of such tax.

(f) The benefits of subsections (c), (d), and (e) shall be extended to the taxpayer if claim therefor is filed before the expiration of the period of limitations properly applicable thereto, or before the expiration of six months after the date of the enactment of the Settlement of War Claims Act of 1928, whichever date is the later. The benefits of subsection (d) shall also be extended to the taxpayer if claim therefor is filed before the expiration of six months after the return of the proceeds.

SEC. 25.[14] (a) (1) The Alien Property Custodian is authorized and directed to invest, from time to time upon the request of the Secretary of the Treasury, out of the funds held by the Alien Property Custodian or by the Treasurer of the United States for the Alien Property Custodian, an amount not to exceed $40,000,000 in the aggregate, in one or more participating certificates issued by the Secretary of the Treasury in accordance with the provisions of this section.

(2) When in the case of any trust written consent under subsection (m) of section 9 has been filed, an amount equal to the portion of such trust the return of which is temporarily postponed under such subsection shall be credited against the investment made under paragraph (1) of this subsection. If the total amount so credited is in excess of the amount invested under paragraph (1) of this subsection, the excess shall be invested by the Alien Property Custodian in accordance with the provisions of this subsection, without regard to the $40,000,000 limitation in paragraph (1). If the amount invested under paragraph (1) of this subsection is in excess of the total amount so credited, such excess shall, from time to time on request of the Alien Property Custodian, be paid to him out of the funds in the German special deposit account created by section 4 of the Settlement of War Claims Act of 1928, and such payments shall have priority over any payments therefrom other than the payments under paragraph (1) of subsection (c) of such section (relating to expenses of administration).

(b) The Alien Property Custodian is authorized and directed to invest, in one or more participating certificates issued by the Secretary of the Treasury, out of the unallocated interest fund, as defined in section 28—

(1) The sum of $25,000,000. If, after the allocation under section 26 has been made, the amount of the unallocated interest fund allo-

[14] Section 25 added by section 10 of the Settlement of War Claims Act of 1928 (45 Stat. 268). Amended by Public Law 794, 70th Cong., approved February 21, 1929 (45 Stat. 1255), and by Public Resolution 48, 71st Cong., approved March 10, 1930 (46 Stat. 84).

cated to the trusts described in subsection (e) of such section is found to be in excess of $25,000,000, such excess shall be invested by the Alien Property Custodian in accordance with the provisions of this subsection. If the amount so allocated is found to be less than $25,000,000 any participating certificate or certificates that have been issued shall be corrected accordingly; and

(2) The balance of such unallocated interest fund remaining after the investment provided for in paragraph (1) and the payment of allocated earnings in accordance with the provisions of subsection (b) of section 26 have been made.

(c) If the amount of such unallocated interest fund, remaining after the investment required by paragraph (1) of subsection (b) of this section has been made, is insufficient to pay the allocated earnings in accordance with subsection (b) of section 26, then the amount necessary to make up the deficiency shall be paid out of the funds in the German special deposit account created by section 4 of the Settlement of War Claims Act of 1928, and such payment shall have priority over any payments therefrom other than the payments under paragraph (1) of subsection (c) of such section (relating to expenses of administration) and the payments under paragraph (2) of subsection (a) of this section.

(d) The Alien Property Custodian is authorized and directed (after the payment of debts under section 9) to transfer to the Secretary of the Treasury, for deposit in such special deposit account, all money and the proceeds of all property, including all income, dividends, interest, annuities, and earnings accumulated in respect thereof, owned by the German Government or any member of the former ruling family. All money and other property shall be held to be owned by the German Government (1) if no claim thereto has been filed with the Alien Property Custodian prior to the expiration of three years from the date of the enactment of the Settlement of War Claims Act of 1928, or (2) if any claim has been filed before the expiration of such period (whether before or after the enactment of such Act), then if the ownership thereof under any such claim is not established by a decision of the Alien Property Custodian or by suit in court instituted, under section 9, within one year after the decision of the Alien Property Custodian, or after the date of the enactment of the Settlement of War Claims Act of 1928, whichever date is later. The amounts so transferred under this subsection shall be credited upon the final payment due the United States from the German Government on account of the awards of the Mixed Claims Commission.

(e) The Secretary of the Treasury is authorized and directed to issue to the Alien Property Custodian, upon such terms and conditions and under such regulations as the Secretary of the Treasury may prescribe, one or more participating certificates, bearing interest payable annually (as nearly as may be) at the rate of 5 per centum per annum, as evidence of the investment by the Alien Property Custodian under subsection (a), and one or more non-interest bearing participating certificates, as evidence of the investment by the Alien Property Custodian under subsection (b). All such certificates shall evidence a participating interest, in accordance with, and subject to the priorities of, the provisions of section 4 of the

Settlement of War Claims Act of 1928, in the funds in the German special deposit account created by such section, except that—

(1) The United States shall assume no liability, directly or indirectly, for the payment of any such certificates, or of the interest thereon, except out of funds in such special deposit account available therefor, and all such certificates shall so state on their face; and

(2) Such certificates shall not be transferable, except that the Alien Property Custodian may transfer any such participating certificate evidencing the interest of a substantial number of the owners of the money invested, to a trustee duly appointed by such owners.

(f) Any amount of principal or interest paid to the Alien Property Custodian in accordance with the provisions of subsection (c) of section 4 of the Settlement of War Claims Act of 1928 shall be allocated pro rata among the persons filing written consents under subsection (m) of section 9 of this Act, and the amounts so allocated shall be paid to such persons. If any person to whom any amount is payable under this subsection has died (or if, in the case of a partnership, association, or other unincorporated body of individuals, or a corporation, its existence has terminated), payment shall be made to the persons determined by the Alien Property Custodian to be entitled thereto.

(g) The Alien Property Custodian is authorized and directed (after the payment of debts under section 9) to transfer to the Secretary of the Treasury, for deposit in the special deposit account (Austrian or Hungarian, as the case may be), created by section 7 of the Settlement of War Claims Act of 1928, all money and the proceeds of all property, including all income, dividends, interest, annuities, and earnings accumulated in respect thereof, owned by the Austrian Government or any corporation all the stock of which was owned by or on behalf of the Austrian Government (including the property of the Imperial Royal Tobacco Monopoly, also known under the name of K. K. Oesterreichische Tabak Regie), or owned by the Hungarian Government or by any corporation all the stock of which was owned by or on behalf of the Hungarian Government.

SEC. 26.[15] (a) The Alien Property Custodian shall allocate among the various trusts the funds in the "unallocated interest fund" (as defined in section 28). Such allocation shall be based upon the earnings (determined by the Secretary of the Treasury) on the total amounts deposited under section 12.

(b) The Alien Property Custodian, when the allocation has been made, is authorized and directed to pay to each person entitled, in accordance with a final decision of a court of the United States or of the District of Columbia, or of an opinion of the Attorney General, to the distribution of any portion of such unallocated interest fund, the amount allocated to his trust, except as provided in subsection (c) of this section.

(c) In the case of persons entitled, under paragraph (12), (13), (14), or (16) of subsection (b) of section (9), to such return, and in the case of persons who would be entitled to such return thereunder if all such money or property had not been returned under paragraph

[15] Section 26 added by section 15 of the Settlement of War Claims Act of 1928 (45 Stat. 273). Amended by Public Law 6, 71st Cong., approved June 11, 1929 (46 Stat. 6).

(9) or (10) of such subsection, and in the case of persons entitled to such return under subsection (n) of section 9, an amount equal to the aggregate amount allocated to their trusts shall be credited against the sum of $25,000,000 invested in participating certificates under paragraph (1) of subsection (b) of section 25. If the aggregate amount so allocated is in excess of $25,000,000, an amount equal to the excess shall be invested in the same manner. Upon the repayment of any of the amounts so invested, under the provisions of section 4 of the Settlement of War Claims Act of 1928, the amount so repaid shall be distributed pro rata among such persons, notwithstanding any receipts or releases given by them.

(d) The unallocated interest fund shall be available for carrying out the provisions of this section, including the expenses of making the allocation.

SEC. 27.[16] The Alien Property Custodian is authorized and directed to return to the United States any consideration paid to him by the United States under any license, assignment, or sale by the Alien Property Custodian to the United States of any patent (or any right therein or claim thereto, and including an application therefor and any patent issued pursuant to any such application).

SEC. 28.[17] As used in this Act, the term "unallocated interest fund" means the sum of (1) the earnings and profits accumulated prior to March 4, 1923, and attributable to investments and reinvestments under section 12 by the Secretary of the Treasury, plus (2) the earnings and profits accumulated on or after March 4, 1923, in respect of the earnings and profits referred to in clause (1) of this section.

SEC. 29.[18] (a) Where the Alien Property Custodian has made demand or requirement for the conveyance, transfer, assignment, delivery, or payment to him of any money or other property of any enemy or ally of enemy (whether or not suit or proceeding for the enforcement thereof has been begun and whether or not any judgment or decree in respect thereof has been made or entered) and where the whole or any part of such money or other property would, if conveyed, transferred, assigned, delivered, or paid to him, be returnable under any provision of this Act, the Alien Property Custodian may, in his discretion, and on such terms and conditions as he may prescribe, waive such demand or requirement, or accept in full satisfaction of such demand, requirement, judgment, or decree, a less amount than that demanded or required by him.

(b) The Alien Property Custodian shall not make any such waiver or compromise except with the approval of the Attorney General; nor (if any part of such money or property would be returnable only upon the filing of the written consent required by subsection (m) of section 9) unless, after compliance with the terms and conditions of such waiver or compromise, the Alien Property Custodian or the Treasurer of the United States will hold (in respect of such enemy or ally of enemy) for investment as provided in section 25, an amount equal to 20 per centum of the sum of (1) the value of the money or other property held by the Alien Property Custodian or the

[16] Section 27 added by section 15 of the Settlement of War Claims Act of 1928 (45 Stat. 274).

[17] Section 28 added by section 15 of the Settlement of War Claims Act of 1928 (45 Stat. 274).

[18] Section 29 added by section 15 of the Settlement of War Claims Act of 1928 (45 Stat. 274).

Treasurer of the United States at the time of such waiver or compromise, plus (2) the value of the money or other property to which the Alien Property Custodian would be entitled under such demand or requirement if the waiver or compromise had not been made.

(c) Where the Alien Property Custodian has made demand or requirement for the conveyance, transfer, assignment, delivery, or payment to him of any money or other property of any enemy or ally of enemy (whether or not suit or proceeding for the enforcement thereof has been begun and whether or not any judgment or decree in respect thereof has been made or entered) and where the interest or right of such enemy or ally of enemy in such money or property has not, prior to the enactment of the Settlement of War Claims Act of 1928, vested in enjoyment, the Alien Property Custodian may, in his discretion, and on such terms and conditions as he may prescribe, waive such demand and requirement, without compliance with the requirements of subsection (b) of this section, but only with the approval of the Attorney General.

(d) Nothing in this section shall be construed as requiring the Alien Property Custodian to make any waiver or compromise authorized by this section, and the Alien Property Custodian may proceed in respect of any demand or requirement referred to in subsection (a) or (c) as if this section had not been enacted.

(e) All money or other property received by the Alien Property Custodian as a result of any action or proceeding (whether begun before or after the enactment of the Settlement of War Claims Act of 1928, and whether or not for the enforcement of a demand or requirement as above specified) shall for the purposes of this Act be considered as forming a part of the trust in respect of which such action or proceeding was brought, and shall be subject to return in the same manner and upon the same conditions as any other money or property in such trust, except as otherwise provided in subsection (b) of this section.

SEC. 30.[19] Any money or other property returnable under subsection (b) or (n) of section 9 shall, at any time prior to such return, be subject to attachment in accordance with the provisions of the code of law for the District of Columbia, as amended, relating to attachments in suits at law and to attachments for the enforcement of judgments at law and decrees in equity, but any writ of attachment or garnishment issuing in any such suit, or for the enforcement of any judgment or decree, shall be served only upon the Alien Property Custodian, who shall for the purposes of this section be considered as holding credits in favor of the person entitled to such return to the extent of the value of the money or other property so returnable. Nothing in this section shall be construed as authorizing the taking of actual possession, by any officer of any court, of any money or other property held by the Alien Property Custodian or by the Treasurer of the United States.

SEC. 31.[20] As used in this Act, the term "member of the former ruling family" means (1) any person who was at any time between April 6, 1917, and July 2, 1921, the German Emperor or the ruler

[19] Section 30 added by section 15 of the Settlement of War Claims Act of 1928 (45 Stat. 275).

[20] Section 31 added by section 15 of the Settlement of War Claims Act of 1928 (45 Stat. 275).

of any constituent kingdom of the German Empire, or (2) the wife or any child of such person.

SEC. 32.[21] (a) The President, or such officer or agency as he may designate, may return any property or interest vested in or transferred to the Alien Property Custodian (other than any property or interest acquired by the United States prior to December 18, 1941), or the net proceeds thereof, whenever the President or such officer or agency shall determine—

(1) that the person who has filed a notice of claim for return, in such form as the President or such officer or agency may prescribe, was the owner of such property or interest immediately prior to its vesting in or transfer to the Alien Property Custodian, or is the legal representative (whether or not appointed by a court in the United States), or successor in interest by inheritance, devise, bequest, or operation of law, of such owner; and

(2) that such owner, and legal representative or successor in interest, if any, are not—

(A) the Government of Germany, Japan, Bulgaria, Hungary, or Rumania; or

(B) a corporation or association organized under the laws of such nation: *Provided*, That any property or interest or proceeds which, but for the provisions of this subdivision (B), might be returned under this section to any such corporation or association, may be returned to the owner or owners of all the stock of such corporation or of all the proprietary and beneficial interest in such association, if their ownership of such stock or proprietary and beneficial interest existed immediately prior to vesting in or transfer to the Alien Property Custodian and continuously thereafter to the date of such return (without regard to purported divestments or limitations of such ownership by any government referred to in subdivision (A) hereof) and if such ownership was by one or more citizens of the United States or by one or more corporations organized under the laws of the United States or any State, Territory, or possession thereof, or the District of Columbia: *Provided further*, That such owner or owners shall succeed to those obligations limited in aggregate amount to the value of such property or interest or proceeds, which are lawfully assertible against the corporation or association by persons not ineligible to receive a return under this section; or

(C) an individual voluntarily resident at any time since December 7, 1941, within the territory of such nation, other than a citizen of the United States or a diplomatic or consular officer of Italy or of any nation with which the United States has not at any time since December 7, 1941, been at war: *Provided*, That an individual who, while in the territory of a nation with which the United States has at any time since December 7, 1941, been at war, was deprived of life or substantially deprived of liberty pursuant to any law, decree, or

[21] Section 32 added by Public Law 322, 79th Cong., approved March 8, 1946 (60 Stat. 50). Section 32 (a) (2) amended by Public Law 671, 79th Cong., approved August 8, 1946 (60 Stat. 925), by Public Law 370, 80th Cong., approved August 5, 1947 (61 Stat. 784), and by Public Law 859, 81st Cong., approved September 29, 1950 (64 Stat. 1080).

regulation of such nation discriminating against political, racial, or religious groups, shall not be deemed to have voluntarily resided in such territory; or

(D) an individual who was at any time after December 7, 1941, a citizen or subject of Germany, Japan, Bulgaria, Hungary, or Rumania, and who on or after December 7, 1941, and prior to the date of the enactment of this section, was present (other than in the service of the United States) in the territory of such nation or in any territory occupied by the military or naval forces thereof or engaged in any business in any such territory: *Provided*, That notwithstanding the provisions of this subdivision (D) return may be made to an individual who, as a consequence of any law, decree, or regulation of the nation of which he was then a citizen or subject, discriminating against political, racial, or religious groups, has at no time between December 7, 1941, and the time when such law, decree, or regulation was abrogated, enjoyed full rights of citizenship under the law of such nation: *And provided further*, That, notwithstanding the provisions of subdivision (C) hereof and of this subdivision (D), return may be made to an individual who at all times since December 7, 1941, was a citizen of the United States, or to an individual who, having lost United States citizenship solely by reason of marriage to a citizen or subject of a foreign country, reacquired such citizenship prior to the date of enactment of this proviso if such individual would have been a citizen of the United States at all times since December 7, 1941, but for such marriage: *And provided further*, That the aggregate book value of returns made pursuant to the foregoing proviso shall not exceed $9,000,000; and any return under such proviso may be made if the book value of any such return, taken together with the aggregate book value of returns already made under such proviso does not exceed $9,000,000; and for the purposes of this proviso the term "book value" means the value, as of the time of vesting, entered on the books of the Alien Property Custodian for the purpose of accounting for the property or interest involved;[22] or

(E) a foreign corporation or association which at any time after December 7, 1941, was controlled or 50 per centum or more of the stock of which was owned by any person or persons ineligible to receive a return under subdivisions (A), (B), (C), or (D) hereof: *Provided*, That notwithstanding the provisions of this subdivision (E), return may be made to a corporation or association so controlled or owned, if such corporation or association was organized under the laws of a nation any of whose territory was occupied by the military or naval forces of any nation with which the United States has at any time since December 7, 1941, been at war, and if such control or ownership arose after March 1, 1938, as an incident to such occupation and was terminated prior to the enactment of this section;

and

[22] Amended by Public Law 378, 82nd Cong., approved June 6, 1952 (66 Stat. 129). See section 2 of Public Law 859, 81st Cong., approved September 29, 1950, printed at page 125 of this booklet.

(3) that the property or interest claimed, or the net proceeds of which are claimed, was not at any time after September 1, 1939, held or used, by or with the assent of the person who was the owner thereof immediately prior to vesting in or transfer to the Alien Property Custodian, pursuant to any arrangement to conceal any property or interest within the United States of any person ineligible to receive a return under subsection (a) (2) hereof;

(4) that the Alien Property Custodian has no actual or potential liability under the Renegotiation Act or the Act of October 31, 1942 (56 Stat. 1013; 35 U. S. C. 89–96), in respect of the property or interest or proceeds to be returned and that the claimant and his predecessor in interest, if any, have no actual or potential liability of any kind under the Renegotiation Act or the said Act of October 31, 1942; or in the alternative that the claimant has provided security or undertakings adequate to assure satisfaction of all such liabilities or that property or interest or proceeds to be retained by the Alien Property Custodian are adequate therefor; and

(5) that such return is in the interest of the United States.

(b) Notwithstanding the limitation prescribed in the Renegotiation Act upon the time within which petitions may be filed in The Tax Court of the United States, any person to whom any property or interest or proceeds are returned hereunder shall, for a period of ninety days (not counting Sunday or a legal holiday in the District of Columbia as the last day) following return, have the right to file such a petition for a redetermination in respect of any final order of the War Contracts Price Adjustment Board determining excessive profits, made against the Alien Property Custodian, or of any determination, not embodied in an agreement, of excessive profits, so made by or on behalf of a Secretary.

(c) Any person to whom any invention, whether patented or unpatented, or any right or interest therein is returned hereunder shall be bound by any notice or order issued or agreement made pursuant to the Act of October 31, 1942 (56 Stat. 1013; 35 U. S. C. 89–96), in respect of such invention or right or interest, and such person to whom a licensor's interest is returned shall have all rights assertible by a licensor pursuant to section 2 of the said Act.

(d) Except as otherwise provided herein, and except to the extent that the President or such officer or agency as he may designate may otherwise determine, any person to whom return is made hereunder shall have all rights, privileges, and obligations in respect to the property or interest returned or the proceeds of which are returned which would have existed if the property or interest had not vested in the Alien Property Custodian, but no cause of action shall accrue to such person in respect of any deduction or retention of any part of the property or interest or proceeds by the Alien Property Custodian for the purpose of paying taxes, costs, or expenses in connection with such property or interest or proceeds: *Provided*, That except as provided in subsections (b) and (c) hereof, no person to whom a return is made pursuant to this section, nor the successor in interest of such person, shall acquire or have any claim or right of action against the United States or any department, establishment, or agency thereof, or corporation owned thereby, or against any person authorized or licensed by the United States, founded upon the retention, sale, or other disposition, or use, during

the period it was vested in the Alien Property Custodian, of the returned property, interest, or proceeds. Any notice to the Alien Property Custodian in respect of any property or interest or proceeds shall constitute notice to the person to whom such property or interest or proceeds is returned and such person shall succeed to all burdens and obligations in respect of such property or interest or proceeds which accrued during the time of retention by the Alien Property Custodian, but the period during which the property or interest or proceeds returned were vested in the Alien Property Custodian shall not be included for the purpose of determining the application of any statute of limitations to the assertion of any rights by such person in respect of such property or interest or proceeds.

(e) No return hereunder shall bar the prosecution of any suit at law or in equity against a person to whom return has been made, to establish any right, title, or interest, which may exist or which may have existed at the time of vesting, in or to the property or interest returned, but no such suit may be prosecuted by any person ineligible to receive a return under subsection (a) (2) hereof. With respect to any such suit, the period during which the property or interest or proceeds returned were vested in the Alien Property Custodian shall not be included for the purpose of determining the application of any statute of limitations.

(f) At least thirty days before making any return to any person other than a resident of the United States or a corporation organized under the laws of the United States, or any State, Territory, or possession thereof, or the District of Columbia, the President or such officer or agency as he may designate shall publish in the Federal Register a notice of intention to make such return, specifying therein the person to whom return is to be made and the place where the property or interest or proceeds to be returned are located. Publication of a notice of intention to return shall confer no right of action upon any person to compel the return of any such property or interest or proceeds, and such notice of intention to return may be revoked by appropriate notice in the Federal Register. After publication of such notice of intention and prior to revocation thereof, the property or interest or proceeds specified shall be subject to attachment at the suit of any citizen or resident of the United States or any corporation organized under the laws of the United States, or any State, Territory, or possession thereof, or the District of Columbia, in the same manner as property of the person to whom return is to be made: *Provided*, That notice of any writ of attachment which may issue prior to return shall be served upon the Alien Property Custodian. Any such attachment proceeding shall be subject to the provisions of law relating to limitation of actions applicable to actions at law in the jurisdiction in which such proceeding is brought, but the period during which the property or interest or proceeds were vested in the Alien Property Custodian shall not be included for the purpose of determining the period of limitation. No officer of any court shall take actual possession, without the consent of the Alien Property Custodian, of any property or interest or proceeds so attached, and publication of a notice of revocation of intention to return shall invalidate any attachment with respect to the specified property or interest or proceeds, but if there is no such revocation, the President or such of-

ficer or agency as he may designate shall accord full effect to any such attachment in returning any such property or interest or proceeds.

(g) Without limitation by or upon any other existing provision of law with respect to the payment of expenses by the Alien Property Custodian, the Custodian may retain or recover from any property or interest or proceeds returned pursuant to this section or section 9 (a) of this Act an amount not exceeding that expended or incurred by him for the conservation, preservation, or maintenance of such property or interest or proceeds, or other property or interest or proceeds returned to the same person.

(h) [23] The President may designate one or more organizations as successors in interest to deceased persons who, if alive, would be eligible to receive returns under the provisos of subdivision (C) or (D) of subsection (a) (2) thereof. An organization so designated shall be deemed a successor in interest by operation of law for the purpose of subsection (a) (1) hereof. Return may be made, to an organization so designated, (a) before the expiration of two years from the vesting of the property or interest in question, if the President or such officer or agency as he may designate determines from all relevant facts of which he is then advised that there is no basis for reasonable doubt that the former owner is dead and is survived by no person eligible under section 32 to claim as successor in interest by inheritance, devise, or bequest; and (b) after the expiration of such time, if no claim for the return of the property or interest is pending. Total returns pursuant to this subsection shall not exceed $3,000,000.

No return may be made to an organization so designated unless it files notice of claim before the expiration of one year from the effective date of this Act and unless it gives firm and responsible assurance approved by the President that (i) the property or interest returned to it or the proceeds of any such property or interest will be used on the basis of need in the rehabilitation and settlement of persons in the United States who suffered substantial deprivation of liberty or failed to enjoy the full rights of citizenship within the meaning of subdivisions (C) and (D) of subsection (a) (2) hereof; (ii) it will transfer, at any time within two years from the time that return is made, such property or interest or the equivalent value thereof to any person whom the President or such officer or agency shall determine to be eligible under section 32 to claim as owner or successor in interest to such owner, by inheritance, devise, or bequest; (iii) it will make to the President, with a copy to be furnished to the Congress, such reports (including a detailed annual report on the use of the property or interest returned to it or the proceeds of any such property or interest) and permit such examination of its books as the President or such officer or agency may from time to time require; and (iv) will not use such property or interest or the proceeds of such property or interest for legal fees, salaries or any other administrative expenses connected with the filing of claims for or the recovery of such property or interest.

The filing of notice of claim by an organization so designated shall not bar the payment of debt claims under section 34 of this Act.

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[23] Subsection (h) added by Public Law 626, 83d Cong., approved August 23, 1954 (68 Stat. 767).

As used in this subsection, "organization" means only a nonprofit charitable corporation incorporated on or before January 1, 1950, under the laws of any State of the United States or of the District of Columbia with the power to sue and be sued.

SEC. 33.[24] No return may be made pursuant to section 9 or 32 unless notice of claim has been filed: (a) in the case of any property or interest acquired by the United States prior to December 18, 1941, by August 9, 1948; or (b) in the case of any property or interest acquired by the United States on or after December 18, 1941, not later than one year from the enactment of this amendment, or two years from the vesting of the property or interest in respect of which the claim is made, whichever is later; except that return may be made to a successor organization designated pursuant to section 32 (h) hereof if notice of claim is filed before the expiration of one year from the effective date of this Act. No suit pursuant to section 9 may be instituted after April 30, 1949, or after the expiration of two years from the date of the seizure by or vesting in the Alien Property Custodian, as the case may be, of the property or interest in respect of which relief is sought, whichever is later, but in computing such two years there shall be excluded any period during which there was pending a suit or claim for return pursuant to section 9 or 32 (a) hereof.

SEC. 34.[25] (a) Any property or interest vested in or transferred to the Alien Property Custodian (other than any property or interest acquired by the United States prior to December 18, 1941), or the net proceeds thereof, shall be equitably applied by the Custodian in accordance with the provisions of this section to the payment of debts owed by the person who owned such property or interest immediately prior to its vesting in or transfer to the Alien Property Custodian. No debt claim shall be allowed under this section if it was not due and owing at the time of such vesting or transfer, or if it arose from any action or transactions prohibited by or pursuant to this Act and not licensed or otherwise authorized pursuant thereto, or (except in the case of debt claims acquired by the Custodian) if it was at the time of such vesting or transfer due and owing to any person who has since the beginning of the war been convicted of violation of this Act, as amended, sections 1–6 of the Criminal Code (18 U. S. C. 1–6), title I of the Act of June 15, 1917 (ch. 30, 40 Stat. 217), as amended; the Act of April 20, 1918 (ch. 59, 40 Stat. 534), as amended; the Act of June 8, 1934 (ch. 327, 52 Stat. 631), as amended; the Act of January 12, 1938 (ch. 2, 52 Stat. 3); title I, Alien Registration Act, 1940 (ch. 439, 54 Stat. 670); the Act of October 17, 1940 (ch. 897, 54 Stat. 1201); or the Act of June 25, 1942 (ch. 447, 56 Stat. 390). Any defense to the payment of such claims which would have been available to the debtor shall be available to the Custodian, except that the period from and after the beginning of the war shall not be included for the purpose

[24] Section 33 added by Public Law 671, 79th Cong., approved August 8, 1946 (60 Stat. 925). Amended by Public Law 370, 80th Cong., approved August 5, 1947 (61 Stat. 784), by Public Law 874, 80th Cong., approved July 1, 1948 (62 Stat. 1218), by Public Law 292, 83d Cong., approved February 9, 1954 (68 Stat. 7), and by Public Law 626, 83d Cong., approved August 23, 1954 (68 Stat. 767).

[25] Section 34 added by Public Law 671, 79th Cong., approved August 8, 1946 (60 Stat. 925).

was not available to him. Any interested debt claimant who has filed a claim with the Custodian pursuant to this section, upon timely application to the court, shall be permitted to intervene in such review proceedings. The court shall enter judgment affirming or modifying the schedule as prepared by the Custodian and directing payment, if any be found due, pursuant to the schedule as affirmed or modified and to the extent of the money from which, in accordance with subsection (d) hereof, payment may be made. Pending the decision of the court on such complaint for review, and pending final determination of any appeal from such decision, payment may be made only to an extent, if any, consistent with the contentions of all claimants for review.

(g) Debt claims shall be paid in the following order of priority: (1) Wage and salary claims, not to exceed $600; (2) claims entitled to priority under sections 191 and 193 of title 31 of the United States Code, except as provided in subsection (h) hereof; (3) all other claims for services rendered, for expenses incurred in connection with such services, for rent, for goods and materials delivered to the debtor, and for payments made to the debtor for goods or services not received by the claimant; (4) all other debt claims. No payment shall be made to claimants within a subordinate class unless the money from which, in accordance with subsection (d) hereof, payment may be made permits payment in full of all allowed claims in every prior class.

(h) No debt of any kind shall be entitled to priority under any law of the United States or any State, Territory, or possession thereof, or the District of Columbia, solely by reason of becoming a debt due or owing to the United States as a result of its acquisition by the Alien Property Custodian.

(i) The sole relief and remedy available to any person seeking satisfaction of a debt claim out of any property or interest which shall have been vested in or transferred to the Alien Property Custodian (other than any property or interest acquired by the United States prior to December 18, 1941), or the proceeds thereof, shall be the relief and remedy provided in this section, and suits for the satisfaction of debt claims shall not be instituted, prosecuted, or further maintained except in conformity with this section: *Provided*, That no person asserting any interest, right, or title in any property or interest or proceeds acquired by the Alien Property Custodian, shall be barred from proceeding pursuant to this Act for the return thereof, by reason of any proceeding which he may have brought pursuant to this section; nor shall any security interest asserted by the creditor in any such property or interest or proceeds be deemed to have been waived solely by reason of such proceeding. The Alien Property Custodian shall treat all debt claims now filed with him as claims filed pursuant to this section. Nothing contained in this section shall bar any person from the prosecution of any suit at law or in equity against the original debtor or against any other person who may be liable for the payment of any debt for which a claim might have been filed hereunder. No purchaser, lessee, licensee, or other transferee of any property or interest from the Alien Property Custodian shall, solely by reason of such purchase, lease, license, or transfer, become liable for the payment of any debt owed by the

person who owned such property or interest prior to its vesting in or transfer to the Alien Property Custodian. Payment by the Alien Property Custodian to any debt claimant shall constitute, to the extent of payment, a discharge of the indebtedness represented by the claim.

SEC. 35.[26] The officer or agency empowered to entertain claims under sections 9 (a), 32, and 34 hereof shall have power to hold such hearings as may be deemed necessary; to prescribe rules and regulations governing the form and contents of claims, the proof thereof, and all other matters related to proceedings on such claims; and in connection with such proceedings to issue subpenas, administer oaths, and examine witnesses. Such powers, and any other powers conferred upon such officer or agency by sections 9 (a), 32, and 34 hereof may be exercised through subordinate officers designated by such officer or agency.

SEC. 36.[27] (a) The vesting in or transfer to the Alien Property Custodian of any property or interest (other than any property or interest acquired by the United States prior to December 18, 1941), or the receipt by him of any earnings, increment, or proceeds thereof shall not render inapplicable any Federal, State, Territorial, or local tax for any period prior or subsequent to the date of such vesting or transfer, nor render applicable the exemptions provided in title II of the Social Security Act with respect to service performed in the employ of the United States Government or of any instrumentality of the United States.

(b) The Alien Property Custodian shall, notwithstanding the filing of any claim or the institution of any suit under this Act, pay any tax incident to any such property or interest, or the earnings, increment, or proceeds thereof, at the earliest time appearing to him to be not contrary to the interest of the United States. The former owner shall not be liable for any such tax accruing while such property, interest, earnings, increment, or proceeds are held by the Alien Property Custodian, unless they are returned pursuant to this Act without payment of such tax by the Alien Property Custodian. Every such tax shall be paid by the Alien Property Custodian to the same extent, as nearly as may be deemed practicable, as though the property or interest had not been vested in or transferred to the Alien Property Custodian, and shall be paid only out of the property or interest, or earnings, increment, or proceeds thereof, to which they are incident or out of other property or interests acquired from the same former owner, or earnings, increment, or proceeds thereof. No tax liability may be enforced from any property or interest or the earnings, increment, or proceeds thereof while held by the Alien Property Custodian except with his consent. Where any property or interest is transferred, otherwise than pursuant to section 9 (a) or 32 hereof, the Alien Property Custodian may transfer the property or interest free and clear of any tax, except to the extent of any lien for a tax existing and perfected at the date of vesting, and the proceeds of such transfer shall, for tax purposes, replace the property or interest in the hands of the Alien Property Custodian.

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[26] Section 35 added by Public Law 671, 79th Cong., approved August 8, 1946 (60 Stat. 925).

[27] Section 36 added by Public Law 671, 79th Cong., approved August 8, 1946 (60 Stat. 925).

(c) Subject to the provisions of subsection (b) hereof, the manner of computing any Federal taxes, including without limitation by reason of this enumeration, the applicability in such computation of credits, deductions, and exemptions to which the former owner is or would be entitled, and the time and manner of any payment of such taxes and the extent of any compliance by the Custodian with provisions of Federal law and regulations applicable with respect to Federal taxes, shall be in accordance with regulations prescribed by the Commissioner of Internal Revenue with the approval of the Secretary of the Treasury to effectuate this section. Statutes of limitations on assessment, collection, refund, or credit of Federal taxes shall be suspended, with respect to any vested property or interest, or the earnings, increment or proceeds thereof, while vested and for six months thereafter; but no interest shall be paid upon any refund with respect to any period during which the statute of limitations is so suspended.

(d) The word "tax" as used in this section shall include, without limitation by reason of this enumeration, any property, income, excess-profits, war-profits, excise, estate and employment tax, import duty, and special assessment; and also any interest, penalty, additional amount, or addition thereto not arising from any act, omission, neglect, failure, or delay on the part of the Custodian.

(e) Any tax exemption accorded to the Alien Property Custodian by specific provision of existing law shall not be affected by this section.

SEC. 37.[28] The Alien Property Custodian may procure insurance in such amounts, and from such insurers, as he believes will adequately protect him against loss in connection with property or interest or proceeds held by him.

SEC. 38.[29] (a) Notwithstanding any other provision of this Act, it shall be lawful, at any time after the date of cessation of hostilities with any country with which the United States is at war, for any person in the United States to donate, or otherwise dispose of to, and to transport or deliver to, any person in such country any article or articles (including food, clothing, and medicine) intended to be used solely to relieve human suffering.

(b) As used in this section—

(1) the term "person" means any individual, partnership, association, company, or other unincorporated body of individuals, or corporation or body politic;

(2) with respect to any country with which the United States was at war on January 1, 1946, the term "date of cessation of hostilities" shall mean the date of enactment of this Act;

(3) with respect to any other war the term "date of cessation of hostilities" shall mean the date specified by proclamation of the President or by a concurrent resolution of the two Houses of Congress, whichever is the earlier.

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[28] Section 37 added by Public Law 671, 79th Cong., approved August 8, 1946 (60 Stat. 925).

[29] Section 38 added by Public Law 382, 79th Cong., approved May 16, 1946 (60 Stat. 182). As originally enacted the section was not given a number, and this omission was corrected by section 3 of Public Law 671, 79th Cong., approved August 8, 1946 (60 Stat. 925).

SEC. 39.[39] (a) No property or interest therein of Germany, Japan, or any national of either such country vested in or transferred to any officer or agency of the Government at any time after December 17, 1941, pursuant to the provisions of this Act, shall be returned to former owners thereof or their successors in interest, and the United States shall not pay compensation for any such property or interest therein. The net proceeds remaining upon the completion of administration, liquidation, and disposition pursuant to the provisions of this Act of any such property or interest therein shall be covered into the Treasury at the earliest practicable date. Nothing in this section shall be construed to repeal or otherwise affect the operation of the provisions of section 32 of this Act or of the Philippine Property Act of 1946.

(b) The Attorney General is authorized and directed, immediately upon the enactment of this subsection, to cover into the Treasury of the United States, for deposit into the War Claims Fund, from property vested in or transfered to him under this Act, such sums, not to exceed $75,000,000 in the aggregate, as may be necessary to satisfy unpaid awards heretofore or hereafter made under the War Claims Act of 1948. There is hereby authorized to be appropriated to the Attorney General such sums as may be necessary to replace the sums deposited by him pursuant to the foregoing sentence.

Approved October 6, 1917.

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[39] Section 39 added by section 12 of the War Claims Act of 1948 (62 Stat. 1246), amended by Public Law 211, 83d Cong., approved August 7, 1953 (67 Stat. 461).

SETTLEMENT OF WAR CLAIMS ACT OF 1928, AS AMENDED

INCLUDING SPECIFIC AMENDMENTS MADE PRIOR TO JANUARY 3, 1956

SETTLEMENT OF WAR CLAIMS ACT OF 1928, AS AMENDED

[PUBLIC—No. 122, 70TH CONGRESS]

[§§ 1–2] [45 STAT. 254]

AN ACT To provide for the settlement of certain claims of American nationals against Germany, Austria, and Hungary, and of nationals of Germany, Austria, and Hungary, against the United States, and for the ultimate return of all property held by the Alien Property Custodian.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Settlement of War Claims Act of 1928."

CLAIMS OF NATIONALS OF THE UNITED STATES AGAINST GERMANY

SEC. 2. (a) The Secretary of State shall, from time to time, certify to the Secretary of the Treasury the awards of the Mixed Claims Commission, United States and Germany, established in pursuance of the agreement of August 10, 1922, between the United States and Germany (referred to in this Act as the "Mixed Claims Commission").

(b) The Secretary of the Treasury is authorized and directed to pay an amount equal to the principal of each award so certified, plus the interest thereon in accordance with the award, accruing before January 1, 1928.

(c) The Secretary of the Treasury is authorized and directed to pay annually (as nearly as may be) simple interest, at the rate of 5 per centum per annum, upon the amounts payable under subsection (b) and remaining unpaid, beginning January 1, 1928, until paid.

(d) The payments authorized by subsection (b) or (c) shall be made in accordance with such regulations as the Secretary of the Treasury may prescribe, but only out of the German special deposit account created by section 4, within the limitations hereinafter prescribed, and in the order of priority provided in subsection (c) of section 4.

(e) There shall be deducted from the amount of each payment, as reimbursement for the expenses incurred by the United States in respect thereof, an amount equal to one-half of 1 per centum thereof. The amount so deducted shall be deposited in the Treasury as miscellaneous receipts. In computing the amounts payable under subsection (c) of section 4 (establishing the priority of payments) the fact that such deduction is required to be made from the payment when computed or that such deduction has been made from prior payments, shall be disregarded.

(f) The amounts awarded to the United States in respect of claims of the United States on its own behalf shall not be payable under this section.

(g)[1] No payment shall be made under this section unless application therefor is made, within twelve years after the date of the enactment of this Act, in accordance with such regulations as the Secretary of the Treasury may prescribe. Payment shall be made only to the person on behalf of whom the award was made, except that—

(1) If such person is deceased or is under a legal disability, payment shall be made to his legal representative, except that if the payment is not over $500 it may be made to the persons found by the Secretary of the Treasury to be entitled thereto, without the necessity of compliance with the requirements of law in respect of the administration of estates;

(2) In the case of a partnership, association, or corporation, the existence of which has been terminated, payment shall be made, except as provided in paragraphs (3) and (4), to the persons found by the Secretary of the Treasury to be entitled thereto;

(3) If a receiver or trustee for the person on behalf of whom the award was made has been duly appointed by a court in the United States and has not been discharged prior to the date of payment, payment shall be made to the receiver or trustee or in accordance with the order of the court; and

(4) In the case of an assignment of an award, or an assignment (prior to the making of the award) of the claim in respect of which the award was made, by a receiver or trustee for any such person, duly appointed by a court in the United States, such payment shall be made to the assignee.

(5)[2] In the case of an assignment of an award, or an assignment (prior to the making of the award) of the claim in respect of which the award was made, by any such person, made in writing, duly acknowledged, and filed with the application for payment, such payment shall be made to the assignee.

(h) Nothing in this section shall be construed as the assumption of a liability by the United States for the payment of the awards of the Mixed Claims Commission, nor shall any payment under this section be construed as the satisfaction, in whole or in part, of any of such awards, or as extinguishing or diminishing the liability of Germany for the satisfaction in full of such awards, but shall be considered only as an advance by the United States until all the payments from Germany in satisfaction of the awards have been received. Upon any payment under this section of an amount in respect of an award, the rights in respect of the award and of the claim in respect of which the award was made shall be held to have been assigned pro tanto to the United States, to be enforced by and on behalf of the United States against Germany, in the same manner and to the same extent as such rights would be enforced on behalf of the American national.

(i) Any person who makes application for payment under this section shall be held to have consented to all the provisions of this Act.

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[1] The time for making application, specified in the first sentence of subsection (g), was modified by Public Resolution 48, 71st Cong., approved March 10, 1930 (46 Stat. 84), by Public Resolution 27, 72d Cong., approved June 14, 1932 (47 Stat. 318), by Public Resolution 11, 73d Cong., approved June 12, 1933 (48 Stat. 125), by Public Resolution 38, 73d Cong., approved June 18, 1934 (48 Stat. 1019), by Public Resolution 136, 74th Cong., approved June 26, 1936 (49 Stat. 1984), and by Public Resolution 98, 75th Cong., approved May 23, 1938 (52 Stat. 437).

[2] Paragraph (5) added by Public Law 426, 72d Cong., approved March 3, 1933 (47 Stat. 1488).

(j) The President is requested to enter into an agreement with the German Government by which the Mixed Claims Commission will be given jurisdiction of and authorized to decide claims of the same character as those of which the commission now has jurisdiction, notice of which is filed with the Department of State before July 1, 1928. If such agreement is entered into before January 1, 1929, awards in respect of such claims shall be certified under subsection (a) and shall be in all other respect subject to the provisions of this section.

(k)[3] The amounts deducted under subsection (e) of this section from payments on account of the awards of the Mixed Claims Commission, United States and Germany, rendered under the agreement between the United States and Germany of December 31, 1928 (entered into under the authority of subsection (j) of this section), shall be available for reimbursing the German Government on account of the expenses incurred in connection with the adjudication by the commission of claims under such agreement, and the Secretary of the Treasury is authorized and directed to pay the amounts so deducted to such representative of the German Government as the Secretary of State may designate.

CLAIMS OF GERMAN NATIONALS AGAINST UNITED STATES.

SEC. 3. (a) There shall be a War Claims Arbiter (hereinafter referred to as the "Arbiter"), who shall be appointed by the President, by and with the advice and consent of the Senate, without regard to any provision of law prohibiting the holding of more than one office. The Arbiter, notwithstanding any other provision of law, shall receive a salary to be fixed by the President in an amount, if any, which if added to any other salary will make his total salary from the United States not in excess of $15,000 a year.

(b) It shall be the duty of the Arbiter, within the limitations hereinafter prescribed, to hear the claims of any German national (as hereinafter defined), and to determine the fair compensation to be paid by the United States, in respect of—

(1) Any merchant vessel (including any equipment, appurtenances, and property contained therein), title to which was taken by or on behalf of the United States under the authority of the Joint Resolution of May 12, 1917 (Fortieth Statutes, page 75). Such compensation shall be the fair value, as nearly as may be determined, of such vessel to the owner immediately prior to the time exclusive possession was taken under the authority of such Joint Resolution, and in its condition at such time, taking into consideration the fact that such owner could not use or permit the use of such vessel, or charter or sell or otherwise dispose of such vessel for use or delivery, prior to the termination of the war, and that the war was not terminated until July 2, 1921, except that there shall be deducted from such value any consideration paid for such vessel by the United States. The findings of the Board of Survey appointed under the authority of such Joint Resolution shall be competent evidence in any proceeding before the Arbiter to determine the amount of such compensation.

(2) Any radio station (including any equipment, appurtenances, and property contained therein) which was sold to the United States

[3] Subsection (k) added by Public Law 411, 71st Cong., approved June 21, 1930 (46 Stat. 796).

by or under the direction of the Alien Property Custodian under authority of the Trading with the Enemy Act, or any amendment thereto. Such compensation shall be the fair value, as nearly as may be determined, which such radio station would have had on July 2, 1921, if returned to the owner on such date in the same condition as on the date on which it was seized by or on behalf of the United States, or on which it was conveyed or delivered to, or seized by, the Alien Property Custodian, whichever date is earlier, except that there shall be deducted from such value any consideration paid for such radio station by the United States.

(3) Any patent (or any right therein or claim thereto, and including an application therefor and any patent issued pursuant to any such application) which was licensed, assigned, or sold by the Alien Property Custodian to the United States. Such compensation shall be the amount, as nearly as may be determined, which would have been paid if such patent, right, claim, or application had been licensed, assigned, or sold to the United States by a citizen of the United States, except that there shall be deducted from such amount any consideration paid therefor by the United States (other than consideration which is returned to the United States under section 27 of the Trading with the Enemy Act, as amended).

(4) The use by or for the United States of any invention described in and covered by any patent (including an application therefor and any patent issued pursuant to any such application) which was conveyed, transferred, or assigned to, or seized by, the Alien Property Custodian, but not including any use during any period between April 6, 1917, and November 11, 1918, both dates inclusive, or on or after the date on which such patent was licensed, assigned, or sold by the Alien Property Custodian. In determining such compensation, any defense, general or special, available to a defendant in an action for infringement or in any suit in equity for relief against an alleged infringement, shall be available to the United States.

(c) The proceedings of the Arbiter under this section shall be conducted in accordance with such rules of procedure as he may prescribe. The Arbiter, or any referee designated by him, is authorized to administer oaths, to hold hearings at such places within or without the United States as the Arbiter deems necessary, and to contract for the reporting of such hearings. Any witness appearing for the United States before the Arbiter or any such referee at any place within or without the United States may be paid the same fees and mileage as witnesses in courts of the United States. Such payments shall be made out of any funds in the German special deposit account hereinafter provided for, and may be made in advance.

(d) The Arbiter may, from time to time, and shall, upon the determination by him of the fair compensation in respect of all such vessels, radio stations, and patents, make a tentative award to each claimant of the fair compensation to be paid in respect of his claim, including simple interest, at the rate of 5 per centum per annum, on the amount of such compensation from July 2, 1921, to December 31, 1928, both dates inclusive. If a German national filing a claim in respect of any such vessel fails to establish to the satisfaction of the Arbiter that neither the German Government nor any member of the former ruling family had, at the time of the taking, any interest in such vessel either

directly or indirectly, through stock ownership or control or otherwise, then (whether or not claim has been filed by or on behalf of such Government or individual) no award shall be made to such German national unless and until the extent of such interest of the German Government and of the members of the former ruling family has been determined by the Arbiter. Upon such determination the Arbiter shall make a tentative award in favor of such Government or individual in such amount as the Arbiter determines to be in justice and equity representative of such interest, and reduce accordingly the amount available for tentative awards to German nationals filing claims in respect of the vessel so that the aggregate of the tentative awards (including awards on behalf of the German Government and members of the former ruling family) in respect of the vessel will be within the amount of fair compensation determined under subsection (b) of this section.

(e) The total amount to be awarded under this section shall not exceed $100,000,000, minus the sum of (1) the expenditures in carrying out the provisions of this section (including a reasonable estimate for such expenditures to be incurred prior to the expiration of the term of office of the Arbiter) and (2) the aggregate consideration paid by the United States in respect of the acquisition of such vessels and radio stations, and the use, license, assignment, and sale of such patents (other than consideration which is returned to the United States under section 27 of the Trading with the Enemy Act, as amended).

(f) If the aggregate amount of the tentative awards exceeds the amount which may be awarded under subsection (e), the Arbiter shall reduce pro rata the amount of each tentative award. The Arbiter shall enter an award of the amount to be paid each claimant, and thereupon shall certify such awards to the Secretary of the Treasury.

(g) The Secretary of the Treasury is authorized and directed to pay the amount of the awards certified under subsection (f).

(h) The Secretary of the Treasury is authorized and directed to pay annually (as nearly as may be) simple interest, at the rate of 5 per centum per annum, upon the amount of any such award remaining unpaid, beginning January 1, 1929, until paid.

(i) The payments in respect of awards under this section shall be made in accordance with such regulations as the Secretary of the Treasury may prescribe, but only out of the German special deposit account created by section 4, within the limitations hereinafter prescribed, and in the order of priority provided in subsections (c) and (d) of section 4.

(j) The Secretary of the Treasury shall not pay any amount in respect of any award made to or on behalf of the German Government or any member of the former ruling family, but the amount of any such award shall be credited upon the final payment due the United States from the German Government for the purpose of satisfying the awards of the Mixed Claims Commission.

(k) No payment shall be made under this section unless application therefor is made, within two years after the date the award is certified, in accordance with such regulations as the Secretary of the Treasury may prescribe. Payment of any amount in respect of any award may be made, in the discretion of the Secretary of the Treasury, either in the United States or in Germany, and either in money of the United States or in lawful German money, and shall be made only to the person on behalf of whom the award was made, except that—

(1) If such person is deceased or is under a legal disability, payment shall be made to his legal representative, except that if the payment is not over $500 it may be made to the persons found by the Secretary of the Treasury to be entitled thereto, without the necessity of compliance with the requirements of law in respect of the administration of estates;

(2) In the case of a partnership, association, or corporation, the existence of which has been terminated, payment shall be made, except as provided in paragraphs (3) and (4), to the persons found by the Secretary of the Treasury to be entitled thereto;

(3) If a receiver or trustee for the person on behalf of whom the award was made has been duly appointed by a court of competent jurisdiction and has not been discharged prior to the date of payment, payment shall be made to the receiver or trustee or in accordance with the order of the court; and

(4) In the case of an assignment of an award, or of an assignment (prior to the making of the award) of the claim in respect of which such award was made, by a receiver or trustee for any such person, duly appointed by a court of competent jurisdiction, payment shall be made to the assignee.

(5) [4] In the case of an assignment of an award, or an assignment (prior to the making of the award) of the claim in respect of which the award was made, by any such person, made in writing duly acknowledged, and filed with the application for payment, such payment shall be made to the assignee.

(l) The head of any executive department, independent establishment, or agency in the executive branch of the Government, including the Alien Property Custodian and the Comptroller General, shall, upon request of the Arbiter, furnish such records, documents, papers, correspondence, and information in the possession of such department, independent establishment, or agency as may assist the Arbiter; furnish them statements and assistance of the same character as is described in section 188 of the Revised Statutes, and may temporarily detail any officers or employees of such department, independent establishment, or agency to assist the Arbiter, or to act as a referee, in carrying out the provisions of this section. The Attorney General shall assign such officers and employees of the Department of Justice as may be necessary to represent the United States in the proceedings under this section.

(m) The Arbiter, with the approval of the Secretary of the Treasury, is authorized to (1) appoint and fix the salaries of such officers, referees, and employees, without regard to the civil service laws and regulations or to the Classification Act of 1923, and (2) make such expenditures (including expenditures for the salary of the Arbiter, rent and personal services at the seat of government and elsewhere, law books, periodicals, books of reference, and printing and binding) as may be necessary for carrying out the provisions of this section and within the funds available therefor. Any officer or employee detailed or assigned under subsection (l) shall be entitled to receive (notwithstanding any provision of law to the contrary) such additional compensation as the Arbiter, with the approval of the Secretary of the

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[4] Paragraph (5) added by Public Law 426, 72d Cong., approved March 3, 1933 (47 Stat. 1488).

Treasury, may prescribe. The Arbiter and officers and employees appointed, detailed, or assigned shall be entitled to receive their necessary traveling expenses and actual expenses incurred for subsistence (without regard to any limitations imposed by law) while away from the District of Columbia on business required by this section.

(n) On the date on which the awards are certified to the Secretary of the Treasury under subsection (f) or the date on which the awards are certified to the Secretary of the Treasury under subsection (e) of section 6 (patent claims of Austrian and Hungarian nationals), whichever date is the later, the terms of office of the Arbiter, and of the officers and employees appointed by the Arbiter, shall expire, and the books, papers, records, correspondence, property, and equipment of the office shall be transferred to the Department of the Treasury.

(o) No award or tentative award shall be made by the Arbiter in respect of any claim if (1) such claim is filed after the expiration of four months from the date on which the Arbiter takes office, or (2) any judgment or decree awarding compensation or damages in respect thereof has been rendered against the United States, and if such judgment or decree has become final (whether before or after the enactment of this Act), or (3) any suit or proceeding against the United States, or any agency thereof, is commenced or is pending in respect thereof and is not dismissed upon motion of the person by or on behalf of whom it was commenced, made before the expiration of six months from the date on which the Arbiter takes office and before any judgment or decree awarding compensation or damages becomes final.

(p) [5] There is hereby authorized to be appropriated, to be immediately available and to remain available until expended, the sum of $50,000,000, and, after the date on which the awards of the Arbiter under this section are certified to the Secretary of the Treasury, such additional amounts as, when added to the amounts previously appropriated, will be equivalent to the aggregate amount of such awards plus the amounts necessary for the expenditures authorized by subsections (c) and (m) of this section (expenses of administration), except that the aggregate of such appropriations shall not exceed $100,000,000.

(q) The provisions of this section shall constitute the exclusive method for the presentation and payment of claims arising out of any of the acts by or on behalf of the United States for which this section provides a remedy. Any person who files any claim or makes application for any payment under this section shall be held to have consented to all the provisions of this Act. This subsection shall not bar the presentation of a claim under section 21 (relating to the claims of certain former German nationals in respect of the taking of the vessels "Carl Diederichsen" and "Johanne"); but no award shall be made under section 21 in respect of either of such vessels to or on behalf of any person to whom or on whose behalf an award is made under this section in respect of such vessel.

(r) If the aggregate amount to be awarded in respect of any vessel, radio station, or patent is awarded in respect of two or more claims, such amount shall be apportioned among such claims by the Arbiter as he determines to be just and equitable and as the interests of the claimants may appear.

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[5] See Public Resolution No. 77, 71st Cong., printed at page 120 of this booklet.

(s) The Secretary of the Treasury, upon the certification of any of the tentative awards made under subsection (d) of this section and the recommendation of the Arbiter, may make such pro rata payments in respect of such tentative awards as he deems advisable, but the aggregate of such payments shall not exceed $25,000,000.

GERMAN SPECIAL DEPOSIT ACCOUNT

SEC. 4. (a) There is hereby created in the Treasury a German special deposit account, into which shall be deposited all funds hereinafter specified and from which shall be disbursed all payments authorized by section 2 or 3, including the expenses of administration authorized under subsections (c) and (m) of section 3 and subsection (e) of this section.

(b) The Secretary of the Treasury is authorized and directed to deposit in such special deposit account—

(1) All sums invested or transferred by the Alien Property Custodian, under the provisions of section 25 of the Trading with the Enemy Act, as amended;

(2) The amounts appropriated under the authority of section 3 (relating to claims of German nationals);

(3) All money (including the proceeds of any property, rights, or benefits which may be sold or otherwise disposed of, upon such terms as he may prescribe) received, whether before or after the enactment of this Act, by the United States in respect of claims of the United States against Germany on account of the awards of the Mixed Claims Commission; and

(4) [6] All money held in the Alien Property Trust Fund whose payment is restricted under the joint resolution entitled "Joint resolution to amend the Settlement of War Claims Act of 1928, as amended", approved June 27, 1934, other than property with respect to which the restrictions imposed by such joint resolution have been removed by the President prior to the enactment of this paragraph. The Attorney General shall certify to the Secretary of the Treasury the amounts to be so deposited.

(c)[7] The Secretary of the Treasury is authorized and directed, out of the funds in such special deposit account, subject to the provisions of subsection (d), and in the following order of priority—

(1) To make the payments of expenses of administration authorized by subsections (c) and (m) of section 3 or subsection (e) of this section;

(2) To make so much of each payment authorized by subsection (b) of section 2 (relating to awards of the Mixed Claims Commission), as is attributable to an award on account of death or personal injury, together with interest thereon as provided in subsection (c) of section 2;

(3) To make each payment authorized by subsection (b) of section 2 (relating to awards of the Mixed Claims Commission), if the amount thereof is not payable under paragraph (2) of this subsection and does not exceed $100,000, and to pay interest thereon as provided in subsection (c) of section 2;

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[6] Paragraph (4) added by Public Law 375, 80th Cong., approved August 6, 1947 (61 Stat. 789).

[7] Subsection (c) amended by Public Law 375, 80th Cong., approved August 6, 1947 (61 Stat. 789).

(4) To pay the amount of $100,000 in respect of each payment authorized by subsection (b) of section 2 (relating to awards of the Mixed Claims Commission), if the amount of such authorized payment is in excess of $100,000 and is not payable in full under paragraph (2) of this subsection. No person shall be paid under this paragraph and paragraph (3) an amount in excess of $100,000 (exclusive of interest beginning January 1, 1928), irrespective of the number of awards made on behalf of such person;

(5) To make additional payments authorized by subsection (b) of section 2 (relating to awards of the Mixed Claims Commission), in such amounts as will make the aggregate payments (authorized by such subsection) under this paragraph and paragraphs (2), (3), and (4) of this subsection equal to 80 per centum of the aggregate amount of all payments authorized by subsection (b) of section 2. Payments under this paragraph shall be prorated on the basis of the amount of the respective payments authorized by subsection (b) of section 2 and remaining unpaid. Pending the completion of the work of the Mixed Claims Commission, the Secretary of the Treasury is authorized to pay such installments of the payments authorized by this paragraph as he determines to be consistent with prompt payment under this paragraph to all persons on behalf of whom claims have been presented to the Commission;

(6) To pay amounts determined by the Secretary of the Treasury to be payable in respect of the tentative awards of the Arbiter, in accordance with the provisions of subsection (s) of section 3 (relating to awards for ships, patents, and radio stations);

(7) To pay to German nationals such amounts as will make the aggregate payments equal to 50 per centum of the amounts awarded under section 3 (on account of ships, patents, and radio stations). Payments authorized by this paragraph or paragraph (6) may, to the extent of funds available under the provisions of subsection (d) of this section, be made whether or not the payments under paragraphs (1) to (5), inclusive, of this subsection have been completed;

(8) To pay (A) the accrued interest payable under subsection (c) of section (2) (in respect of awards of the Mixed Claims Commission) and (B) after such interest has been paid in full, to pay amounts equal to the difference between the aggregate payments (in respect of awards of the Mixed Claims Commission) authorized by subsections (b) and (c) of section 2 and the amounts previously paid in respect thereof: *Provided*, That, for the purpose only of subsection (c) of section 2, the amounts payable under subsection (b) of section 2 and remaining unpaid shall be deemed reduced by the amount of any payments of interest hereafter made under clause (A) hereof;

(9) To pay into the Treasury as miscellaneous receipts the amount of the awards of the Mixed Claims Commission to the United States on its own behalf on account of claims of the United States against Germany;

(10) To pay the accrued interest payable under subsection (h) of section 3 (in respect of awards to German nationals);

(11) To make such payments as are necessary (A) to repay the amounts invested by the Alien Property Custodian under subsection (a) of section 25 of the Trading With the Enemy Act, as amended (relating to the investment of 20 per centum of German property temporarily withheld), (B) to pay amounts equal to the difference

between the aggregate payments (in respect of claims of German nationals) authorized by subsections (g) and (h) of section 3 and the amounts previously paid in respect thereof. If funds available are not sufficient to make the total payments authorized by this paragraph, the amount of payments made from time to time shall be apportioned among the payments authorized under clauses (A) and (B), according to the aggregate amount remaining unpaid under each clause;

(12) To pay accrued interest upon the participating certificates evidencing the amounts invested by the Alien Property Custodian under subsection (a) of section 25 of the Trading With the Enemy Act, as amended (relating to the investment of 20 per centum of German property temporarily withheld);

(13) To make such payments as are necessary to repay the amounts invested by the Alien Property Custodian under subsection (b) of section 25 of the Trading With the Enemy Act, as amended (relating to the investment of the unallocated interest fund); but the amount payable under this paragraph shall not exceed the aggregate amount allocated to the trusts described in subsection (c) of section 26 of such Act; and

(14) To pay into the Treasury as miscellaneous receipts any funds remaining in the German special deposit account after the payments authorized by paragraphs (1) to (12) have been completed.

(d) 50 per centum of the amounts appropriated under the authority of section 3 (relating to claims of German nationals) shall be available for payments under paragraphs (6) and (7) of subsection (o) of this section (relating to such claims) and shall be available only for such payments until such time as the payments authorized by such paragraphs have been completed.

(e) The Secretary of the Treasury is authorized to pay, from funds in the German special deposit account, such amounts, not in excess of $25,000 per annum, as may be necessary for the payment of the expenses in carrying out the provisions of this section and section 25 of the Trading with the Enemy Act, as amended (relating to the investment of funds by the Alien Property Custodian), including personal services at the seat of government.

(f) The Secretary of the Treasury is authorized to invest and reinvest, from time to time, in bonds, notes, or certificates of indebtedness of the United States any of the funds in the German special deposit account, and to deposit to the credit of such account the interest or other earnings thereon.

(g) There shall be deducted from the amounts first payable under this section to any American national in respect of any debt the amount, if any, paid by the Alien Property Custodian in respect of such debt which was not credited by the Mixed Claims Commission in making its award.

CLAIMS OF UNITED STATES AND ITS NATIONALS AGAINST AUSTRIA AND HUNGARY

SEC. 5. (a) The Commissioner of the Tripartite Claims Commission (hereinafter referred to as the "Commissioner") selected in pursuance of the agreement of November 26, 1924, between the United States and Austria and Hungary shall, from time to time, certify to the

Secretary of the Treasury the judgments and interlocutory judgments (hereinafter referred to as "awards") of the Commissioner.

(b) The Secretary of the Treasury is authorized and directed to pay (1) in the case of any such judgment, an amount equal to the principal thereof, plus the interest thereon in accordance with such judgment, and (2) in the case of any such interlocutory judgment, an amount equal to the principal thereof (converted at the rate of exchange specified in the certificate of the Commissioner provided for in section 7), plus the interest thereon in accordance with such certificate.

(c) The payments authorized by subsection (b) shall be made in accordance with such regulations as the Secretary of the Treasury may prescribe, but only out of the special deposit account (Austrian or Hungarian, as the case may be), created by section 7, and within the limitations hereinafter prescribed.

(d) There shall be deducted from the amount of each payment, as reimbursement for expenses incurred by the United States in respect thereof, an amount equal to one-half of 1 per centum thereof. The amount so deducted shall be deposited in the Treasury as miscellaneous receipts.

(e) The amounts awarded to the United States in respect of claims of the United States on its own behalf shall be payable under this section.

(f)[8] No payment shall be made under this section (other than payments to the United States in respect of claims of the United States on its own behalf) unless application therefor is made within twelve years after the date of the enactment of this Act in accordance with such regulations as the Secretary of the Treasury may prescribe. Payment[9] shall be made only to the person on behalf of whom the award was made except in the cases specified in paragraphs (1) to (5) of subsection (g) of section 2.

(g) Any person who makes application for payment under this section shall be held to have consented to all the provisions of this Act.

CLAIMS OF AUSTRIAN AND HUNGARIAN NATIONALS AGAINST THE UNITED STATES

SEC. 6. (a) It shall be the duty of the Arbiter, within the limitations hereinafter prescribed, to hear the claims of any Austrian or Hungarian national (as hereinafter defined) and to determine the compensation to be paid by the United States, in respect of—

(1) Any patent (or any right therein or claim thereto, and including an application therefor and any patent issued pursuant to any such application) which was licensed, assigned, or sold by the Alien Property Custodian to the United States. Such compensation shall be the amount, as nearly as may be determined, which would have

[8] The time for making application, specified in the first sentence of subsection (f), was modified by Public Resolution 48, 71st Cong., approved March 10, 1930 (46 Stat. 84), by Public Resolution 27, 72d Cong., approved June 14, 1932 (47 Stat. 318), by Public Resolution 11, 73d Cong., approved June 12, 1933 (48 Stat. 125), by Public Resolution 38, 73d Cong., approved June 18, 1934 (48 Stat. 1019), by Public Resolution 136, 74th Cong., approved June 26, 1936 (49 Stat. 1984), and by Public Resolution 98, 75th Cong., approved May 23, 1938 (52 Stat. 437).

[9] Second sentence of subsection (f) amended by Public Law 426, 72d Cong., approved March 3, 1933 (47 Stat. 1488).

been paid if such patent, right, claim, or application had been licensed, assigned, or sold to the United States by a citizen of the United States, except that there shall be deducted from such amount any consideration paid therefor by the United States (other than consideration which is returned to the United States under section 27 of the Trading with the Enemy Act, as amended).

(2) The use by or for the United States of any invention described in and covered by any patent (including an application therefor and any patent issued pursuant to any such application) which was conveyed, transferred, or assigned to, or seized by, the Alien Property Custodian, but not including any use during any period between December 7, 1917, and November 3, 1918, both dates inclusive, or on or after the date on which such patent was licensed, assigned, or sold by the Alien Property Custodian. In determining such compensation, any defense, general or special, available to a defendant in an action for infringement or in any suit in equity for relief against an alleged infringement, shall be available to the United States.

(b) The proceedings of the Arbiter under this section shall be conducted in accordance with such rules of procedure as he may prescribe. The Arbiter, or any referee designated by him, is authorized to administer oaths, to hold hearings at such places within or without the United States as the Arbiter deems necessary, and to contract for the reporting of such hearings. Any witness appearing for the United States before the Arbiter or any such referee at any place within or without the United States may be paid the same fees and mileage as witnesses in courts of the United States. Such payments may be made in advance, and may be made in the first instance out of the German special deposit account, subject to reimbursement from the special deposit account (Austrian or Hungarian, as the case may be) hereinafter provided for.

(c) The Arbiter shall, upon the determination by him of the fair compensation in respect of all such patents, make a tentative award to each claimant of the fair compensation to be paid in respect of his claim, including simple interest, at the rate of 5 per centum per annum, on the amount of such compensation from July 2, 1921, to December 31, 1928, both dates inclusive.

(d) The total amount to be awarded under this section shall not exceed $1,000,000, minus the sum of (1) the expenditures in carrying out the provisions of this section (including a reasonable estimate for such expenditures to be incurred prior to the expiration of the term of office of the Arbiter) and (2) the aggregate consideration paid by the United States in respect of the use, license, assignment, and sale of such patents (other than consideration which is returned to the United States under section 27 of the Trading with the Enemy Act, as amended).

(e) If the aggregate amount of the tentative awards exceeds the amount which may be awarded under subsection (d), the Arbiter shall reduce pro rata the amount of each tentative award. The Arbiter shall enter an award of the amount to be paid each claimant, and thereupon shall certify such awards to the Secretary of the Treasury.

(f) The Secretary of the Treasury is authorized and directed to pay the amount of the awards certified under subsection (e), to

gether with simple interest thereon, at the rate of 5 per centum per annum, beginning January 1, 1929, until paid.

(g) The payments authorized by subsection (f) shall be made in accordance with such regulations as the Secretary of the Treasury may prescribe, but only out of the special deposit account (Austrian or Hungarian, as the case may be), created by section 7, and within the limitations hereinafter prescribed.

(h)[10] No payment shall be made under this section unless application therefor is made by March 10, 1940, in accordance with such regulations as the Secretary of the Treasury may prescribe. Payment of any amount in respect of any award may be made, in the discretion of the Secretary of the Treasury, either in the United States or in Austria or in Hungary, and either in money of the United States or in lawful Austrian or Hungarian money (as the case may be), and shall be made only to the person on behalf of whom the award was made, except in the cases specified in paragraphs (1) to (5) of subsection (k) of section 3.

(i) The provisions of subsections (l), (m), and (o) of section 3 shall be applicable in carrying out the provisions of this section, except that the expenditures in carrying out the provisions of section 3 and this section shall be allocated (as nearly as may be) by the Arbiter and paid, in accordance with such allocation, out of the German special deposit account created by section 4 or the special deposit account (Austrian or Hungarian, as the case may be) created by section 7. Such payments may be made in the first instance out of the German special deposit account, subject to reimbursement from the Austrian or the Hungarian special deposit account in appropriate cases.

(j) There is hereby authorized to be appropriated, to remain available until expended, such amount, not in excess of $1,000,000, as may be necessary for carrying out the provisions of this section.

(k) The provisions of this section shall constitute the exclusive method for the presentation and payment of claims arising out of any of the acts by or on behalf of the United States for which this section provides a remedy. Any person who files any claim or makes application for any payment under this section shall be held to have consented to all the provisions of this Act.

(l) If the aggregate amount to be awarded in respect of any patent is awarded in respect of two or more claims, such amount shall be apportioned among such claims by the Arbiter as he determines to be just and equitable and as the interests of the claimants may appear.

AUSTRIAN AND HUNGARIAN SPECIAL DEPOSIT ACCOUNTS

SEC. 7. (a) There are hereby created in the Treasury an Austrian special deposit account and an Hungarian special deposit account, into which, respectively, shall be deposited all funds hereinafter specified and from which, respectively, shall be disbursed all payments and expenditures authorized by section 5 or 6 or this section.

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[10] Subsection (h) amended by Public Law 426, 72d Cong., approved March 3, 1933 (47 Stat. 1488), by Public Resolution 38, 73d Cong., approved June 18, 1934 (48 Stat. 1019), by Public Resolution 136, 74th Cong., approved June 26, 1936 (49 Stat. 1984), and by Public Resolution 98, 75th Cong., approved May 23, 1938 (52 Stat. 437).

(b) The Secretary of the Treasury is authorized and directed to deposit in the Austrian or the Hungarian special deposit account, as the case may be—

(1) The respective amounts appropriated under the authority of section 6 (patent claims of Austrian and Hungarian nationals);

(2) The respective sums transferred by the Alien Property Custodian, under the provisions of subsection (g) of section 25 of the Trading with the Enemy Act, as amended (property of Austrian and Hungarian Governments);

(3) All money (including the proceeds of any property, rights, or benefits which may be sold or otherwise disposed of, upon such terms as he may prescribe) received, whether before or after the enactment of this Act, by the United States in respect of claims of the United States against Austria or Hungary, as the case may be, on account of awards of the Commissioner.

(c) The Secretary of the Treasury is authorized and directed, out of the funds in the Austrian or the Hungarian special deposit account, as the case may be, subject to the provisions of subsections (d) and (e)—

(1) To make the payments of expenses of administration authorized by section 6 or this section;

(2) To make the payments authorized by subsection (b) of section 5 (relating to awards of the Tripartite Claims Commission); and

(3) To make the payments of the awards of the Arbiter, together with interest thereon, as provided by section 6 (relating to claims of Austrian and Hungarian nationals).

(d) No payment shall be made in respect of any award of the Commissioner against Austria or of the Arbiter on behalf of an Austrian national, nor shall any money or other property be returned under paragraph (15), (17), (18), or (19) of subsection (b) of section 9 of the Trading with the Enemy Act, as amended (relating to the return of money and other property by the Alien Property Custodian to Austrian nationals), prior to the date upon which the Commissioner certifies to the Secretary of the Treasury—

(1) That the amounts deposited in the Austrian special deposit account under paragraph (2) of subsection (b) of this section (in respect of property of the Austrian Government or property of a corporation all the stock of which was owned by the Austrian Government) and under paragraph (3) of subsection (b) of this section (in respect of money received by the United States in respect of claims of the United States against Austria on account of awards of the Commissioner) are sufficient to make the payments authorized by subsection (b) of section 5 in respect of awards against Austria; and

(2) In respect of interlocutory judgments entered by the Commissioner, the rate of exchange at which such interlocutory judgments shall be converted into money of the United States and the rate of interest applicable to such judgments and the period during which such interest shall run. The Commissioner is authorized and requested to fix such rate of exchange and interest as he may determine to be fair and equitable, and to give notice thereof, within thirty days after the enactment of this Act.

(e) No payment shall be made in respect of any award of the Commissioner against Hungary or of the Arbiter on behalf of an Hungarian national, nor shall any money or other property be returned under paragraph (15), (20), (21), or (22) of subsection (b) of section 9 of the Trading with the Enemy Act, as amended by this Act (relating to the return of money and other property by the Alien Property Custodian to Hungarian nationals), prior to the date upon which the Commissioner certifies to the Secretary of the Treasury—

(1) That the amounts deposited in the Hungarian special deposit account under paragraph (2) of subsection (b) of this section (in respect of property of the Hungarian Government or property of a corporation all the stock of which was owned by the Hungarian Government) and under paragraph (3) of subsection (b) of this section (in respect of money received in the United States in respect of claims of the United States against Hungary on account of awards of the Commissioner), are sufficient to make the payments authorized by subsection (b) of section 5 in respect of awards against Hungary; and

(2) In respect of interlocutory judgments entered by the Commissioner, the rate of exchange at which such interlocutory judgments shall be converted into money of the United States and the rate of interest applicable to such judgments and the period during which such interest shall run. The Commissioner is authorized and requested to fix such rate of exchange and interest as he may determine to be fair and equitable, and to give notice thereof, within thirty days after the enactment of this Act.

(f) Amounts available under subsection (e) of section 4 (relating to payment of expenses of administration) shall be available for the payment of expenses in carrying out the provisions of this section, including personal services at the seat of government.

(g) The Secretary of the Treasury is authorized to invest and reinvest, from time to time, in bonds, notes, or certificates of indebtedness of the United States, any of the funds in the Austrian or the Hungarian special deposit account, and to deposit to the credit of such account the interest or other earnings thereon.

(h) There shall be deducted from the amounts first payable under this section to any American national in respect of any debt, the amount, if any, paid by the Alien Property Custodian in respect of such debt which was not credited by the Commissioner in making his award.

(i) The payments of the awards of the Commissioner to the United States on its own behalf, on account of claims of the United States against Austria or Hungary, shall be paid into the Treasury as miscellaneous receipts.

(j) Any amount remaining in the Austrian or the Hungarian special deposit account after all the payments authorized to be made therefrom have been completed shall be disposed of as follows:

(1) There shall first be paid into the Treasury as miscellaneous receipts the respective amount, if any, by which the appropriations made under the authority of section 6 and deposited in such special deposit account exceed the payments authorized by such section; and

(2) The remainder shall be refunded to Austria or Hungary, as their respective interests may appear.

FINALITY OF DECISIONS

SEC. 8. (a) Notwithstanding the provisions of section 236 of the Revised Statutes, as amended, the decisions of the Secretary of the Treasury in respect of the funds to be paid into the German, the Austrian, or the Hungarian special deposit account and of the payments therefrom, shall be final and conclusive, and shall not be subject to review by any other officer of the United States, except that payments made under authority of subsection (c) or (m) of section 3 or subsection (e) of section 4 or subsection (f) of section 7 (relating to expenses of administration) shall be accounted for and settled without regard to the provisions of this subsection.

(b) The Secretary of the Treasury, in his annual report to the Congress, shall include a detailed statement of all expenditures made in carrying out the provisions of this Act.

EXCESSIVE FEES PROHIBITED

SEC. 9. (a) The Arbiter, the Commissioner of the Mixed Claims Commission appointed by the United States, and the Commissioner of the Tripartite Claims Commission, respectively, are authorized (upon request as hereinafter provided) to fix reasonable fees (whether or not fixed under any contract or agreement) for services in connection with the proceedings before the Arbiter and the Mixed Claims Commission and the Tripartite Claims Commission, respectively, and with the preparations therefor, and the application for payment, and the payment, of any amount under section 2, 3, 5, or 6. Each such official is authorized and requested to mail to each claimant in proceedings before him or the commission, as the case may be, notice (in English, German, or Hungarian) of the provisions of this section. No fee shall be fixed under this subsection unless written request therefor is filed with such official before the expiration of ninety days after the date of mailing of such notice. In the case of nationals of Germany, Austria, and Hungary, such notice may be mailed to, and the written request may be filed by, the duly accredited diplomatic representative of such nation.

(b) After a fee has been fixed under subsection (a), any person accepting any consideration (whether or not under a contract or agreement entered into prior to the enactment of this Act) the aggregate value of which (when added to any consideration previously received) is in excess of the amount so fixed, for services in connection with the proceedings before the Arbiter or Mixed Claims Commission or Tripartite Claims Commission, or any preparations therefor, or with the application for payment, or the payment, of any amount under section 2, 3, 5, or 6, shall, upon conviction thereof, be punished by a fine of not more than four times the aggregate value of the consideration accepted by such person therefor.

NOTE.—Section 9 (c), and sections 10 through 20, amended the Trading with the Enemy Act.

SHIP CLAIMS OF FORMER GERMAN NATIONALS

SEC. 21. (a) It shall be the duty of the Arbiter to hear the claims of any partnership, association, joint-stock company, or corporation, and to determine the amount of compensation to be paid to it by the United States, in respect of the merchant vessels "Carl Diederichsen" and "Johanne" (including any equipment appurtenances, and property contained therein), title to which was taken by or on behalf of the United States under the authority of the Joint Resolution of May 12, 1917, and which were subsequently sold by or on behalf of the United States. Such compensation shall be determined as provided in paragraph (1) of subsection (b) of section 3 of this Act, but the aggregate compensation shall not exceed, in the case of the "Carl Diederichsen," $166,787.78 and in the case of the "Johanne," $174,600 (such amounts being the price for which the vessels were sold, less the cost of reconditioning). The Arbiter shall not make any award under this section in respect of the claim of any partnership, association, joint-stock company, or corporation unless it appears to his satisfaction that all its members and stockholders who were, on April 6, 1917, citizens or subjects of Germany, became, by virtue of any treaty of peace or plebiscite held or further treaty concluded under such treaty of peace, citizens or subjects of any nation other than Germany, and that all its members and stockholders on the date of the enactment of this Act were on such date citizens or subjects of nations other than Germany.

(b) Upon the determination by him of such compensation the Arbiter shall enter an award in favor of such person of the amount of such compensation and shall certify such award to the Secretary of the Treasury. The amount of such award, together with interest thereon, at the rate of 5 per centum per annum, from July 2, 1921, until the date of such payment, shall be paid by the Secretary of the Treasury, in accordance with such regulations as he may prescribe. There is authorized to be appropriated such amount as may be necessary to make such payment.

(c) No payment shall be made in respect of any award under this section unless application therefor is made, within two years after the date such award is certified, in accordance with such regulations as the Secretary of the Treasury may prescribe, and payment shall be made only to the person on behalf of whom the award was made except in the cases specified in paragraphs (1) to (4) of subsection (k) of section 3. The provisions of subsections (c), (l), (m), (o), and (r) of section 3 shall be applicable in carrying out the provisions of this section.

(d) The provisions of this section shall constitute the exclusive method for the presentation and payment of claims arising out of any of the acts by or on behalf of the United States for which this section provides a remedy. Any person who files any claim or makes application for any payment under this section shall be held to have consented to all the provisions of this Act. This subsection shall not bar the presentation of a claim under section 3 (relating to the ship claims of German nationals) in respect of the taking of the vessel "Carl Diederichsen" or the vessel "Johanne"; but no award shall be made under section 3 in respect of either of such vessels to or on behalf of any person to whom or on whose behalf an award is made under this section in respect of such vessel.

DEFINITIONS

SEC. 22. As used in this Act—

(a) The term "person" means an individual, partnership, association, or corporation.

(b) The term "German national" means—

(1) An individual who, on April 6, 1917, was a citizen or subject of Germany, or who, on the date of the enactment of this Act, is a citizen or subject of Germany.

(2) A partnership, association, or corporation, which, on April 6, 1917, was organized or created under the law of Germany.

(3) The Government of Germany.

(c) The term "member of the former ruling family" means (1) any person who was at any time between April 6, 1917, and July 2, 1921, the German Emperor or the ruler of any constituent kingdom of the German Empire, or (2) the wife or any child of such person.

(d) The term "Austrian national" means—

(1) An individual who, on December 7, 1917, was a citizen of Austria, or who, on the date of the enactment of this Act, is a citizen of Austria.

(2) A partnership, association, or corporation which, on December 7, 1917, was organized or created under the law of Austria.

(3) The Government of Austria.

(e) The term "Hungarian national" means—

(1) An individual who, on December 7, 1917, was a citizen of Hungary, or who, on the date of the enactment of this Act, is a citizen of Hungary.

(2) A partnership, association, or corporation which, on December 7, 1917, was organized or created under the law of Hungary.

(3) The Government of Hungary.

(f) The term "United States" when used in a geographical sense includes the Territories and possessions of the United States and the District of Columbia.

NOTE.—Section 23 was a temporary provision fixing the salaries of certain Government officials.

Approved, March 10, 1928.

WAR CLAIMS ACT OF 1948, AS AMENDED

INCLUDING SPECIFIC AMENDMENTS MADE PRIOR TO JANUARY 3, 1956

WAR CLAIMS ACT OF 1948, AS AMENDED

[PUBLIC LAW 896—80TH CONGRESS]

[§§ 1, 2] [62 Stat. 1240]

AN ACT to amend the Trading with the Enemy Act, as amended; to create a commission to make an inquiry and report with respect to war claims; and to provide for relief for internees in certain cases.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "War Claims Act of 1948".

WAR CLAIMS COMMISSION [1]

SEC. 2. (a)[2] The Foreign Claims Settlement Commission of the United States (hereinafter referred to as the "Commission") may, in accordance with the provisions of the civil-service laws and the Classification Act of 1949, as amended,[3] appoint and fix the compensation of such officers, attorneys, and employees, and may make such expenditures, as may be necessary to carry out its functions. Officers and employees of any other department or agency of the Government may, with the consent of the head of such department or agency, be assigned to assist the Commission in carrying out its functions. The Commission may, with the consent of the head of any other department or agency of the Government, utilize the facilities and services of such department or agency in carrying out the functions of the Commission.

(b) The Commission may prescribe such rules and regulations as may be necessary to enable it to carry out its functions, and may delegate functions to any member, officer, or employee of the Commission. The Commission shall give public notice of the time when, and the limit of time within which, claims may be filed, which notice shall be published in the Federal Register. The limit of time within which claims may be filed with the Commission shall in no event be later than March 31, 1952.[4] The Commission shall take immediate action to advise all persons entitled to file claims under the provisions of this

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[1] The War Claims Commission was abolished, effective July 1, 1954, and its functions transferred to the Foreign Claims Settlement Commission of the United States by Reorganization Plan No. 1 of 1954, printed at page 154 of this booklet.

[2] Section 2 amended by Public Law 75, 81st Cong., approved May 27, 1949 (63 Stat. 132), by Public Law 359, 81st Cong., approved October 15, 1949 (63 Stat. 880), by Public Law 896, 81st Cong., approved August 16, 1950 (64 Stat. 449), by Public Law 16, 82d Cong., approved April 5, 1951 (65 Stat. 24), and by Public Law 615, 83d Cong., approved August 21, 1954 (68 Stat. 759).

[3] See Sec. 1106 (a) and Sec. 1202 (1) of the Classification Act of 1949 (63 Stat. 972).

[4] This date applied only with respect to claims filed under sections 3 (a) through (e), 4 through (c), and 7 (a) of the War Claims Act of 1948 as originally enacted.

Act administered by the Commission of their rights under such provisions, and to assist them in the preparation and filing of their claims.

(c) (1) For the purpose of any hearing, examination, or investigation under this Act, the Commission and those employees designated by the Commission shall have the power to issue subpenas requiring persons to appear and testify or to appear and produce documents, or both, at any designated place where such hearing, examination, or investigation is being held. The Commission or any employee so designated shall, upon application of a claimant, issue to such claimant subpenas requiring the attendance and testimony of witnesses or the production of documents, or both, required by such claimant in hearings upon his claim: *Provided*, That the claimant making such application pay the witness fees and mileage of any witness or witnesses subpenaed upon his request. The production of a person's documents at any place other than his place of business shall not be required, however, in any case in which, prior to the return date specified in the subpena with respect thereto, such person either has furnished the issuer of the subpena with a copy of such documents (certified by such person under oath to be a true and correct copy) or has entered into a stipulation with the issuer of the subpena as to the information contained in such documents.

(2) The Commission may, in case of a failure or refusal on the part of any person to comply with any such subpena, invoke the aid of any United States district court within the jurisdiction of which the hearing, examination, or investigation is being conducted, or such person resides or transacts business. Such court may issue an order requiring such person to appear at the designated place of hearing, examination, or investigation, there to give or produce testimony or documentary evidence concerning the matter in question. Any failure to obey such order of the court shall be punishable by such court as a contempt thereof. All process in any such case may be served in the judicial district wherein such person resides or transacts business or wherever such person may be found.

(3) Witnesses subpenaed under this subsection (d)[5] shall be paid the same fees and mileage that are allowed and paid witnesses in the United States district courts.

(4) Any member of the Commission, and any employee of the Commission authorized by the Commission to do so, may administer to, or take from, any person an oath, affirmation, or affidavit when such action is necessary or appropriate in the performance of the functions or activities of the Commission.

JURISDICTION OF COMMISSION

SEC. 3. The Commission shall have jurisdiction to receive and adjudicate according to law claims as hereinafter provided.

EMPLOYEES OF CONTRACTORS

SEC. 4. (a) The Federal Security Administrator is authorized to receive, adjudicate according to law, and provide for the payment of any claim filed by any person specified in section 101 (a) of the Act

[5] Should read "subsection (c)".

entitled "An Act to provide benefits for the injury, disability, death, or enemy detention of employees of contractors with the United States, and for other purposes", approved December 2, 1942, as amended, or by the legal representative of any such person who may have died, for the amount by which (1) the total sum which would have been payable to such person by his employer (not including any payments for overtime), if such person's contract of employment had been in effect and he had been paid under it for the entire period during which he was entitled to receive benefits under section 101 (b) of such Act, exceeds (2) the entire amount creditable to such person's account for such period under the provisions of such section plus any amounts paid to such person by such employer for such period or recovered by such person in any legal action against such employer based upon such person's right against such employer for such period under the contract of employment, including payments in settlement of the liability of the employer arising under or out of such contract. No claim shall be allowed to any person under the provisions of this section unless such person executes a full release to the employer and to the United States in respect to the liability of the employer arising under or out of the contract of employment, except liability for workmen's compensation benefits under the Act of August 16, 1941, as amended (42 U. S. C. 1651 and the following), or detention or other benefits paid under the Act of December 2, 1942, as amended (42 U. S. C. 1751 and the following). Any claim allowed under the provisions of this section shall be certified by the Administrator to the Secretary of the Treasury for payment out of the War Claims Fund established by section 13 of this Act.

(b) (1) The Secretary of State is hereby authorized and directed to cancel any obligation to the United States of any person specified in section 101 (a) of such Act of December 2, 1942, to pay any sum which may have been advanced to or on behalf of any such person by the Department of State for the purpose of paying the costs of food and medical services furnished to such person during his period of internment by the Imperial Japanese Government or for the purpose of paying transportation or other expenses of repatriation.

(2) The Federal Security Adminstrator is authorized to receive, adjudicate according to law, and provide for the payment of any claim filed by any person specified in section 101 (a) of such Act of December 2, 1942, for the repayment of any sum which may have been paid by such person to the Department of State in settlement of any obligation of the type referred to in paragraph (1) of this subsection. Any claim allowed under the provisions of this paragraph shall be certified by the Administrator to the Secretary of the Treasury for payment out of the War Claims Fund established by section 13 of this Act.

(c) Section 102 (a) of the Act entitled "An Act to provide benefits for the injury, disability, death, or enemy detention of employees of contractors with the United States, and for other purposes", approved December 2, 1942, as amended, is hereby amended by striking out the proviso in such subsection and by substituting the following: "*Provided*, That the total compensation payable under this title for injury or death shall in no event exceed the limitations upon compensation as fixed in section 14 (m) of such Act as such section may from time to time be amended except that the total compensation shall not be less than that provided for in the original enactment of this Act:

Provided further, That any amendment to such Act, the effect of which is to increase the amount of benefits payable for injury or death, shall be applied in the administration of this section as if the amendment had been in effect at the time of the particular injury or death and the compensation (except funeral and burial expenses) in any case previously determined shall be adjusted accordingly in respect to the beneficiary entitled thereto under the Act."

INTERNEES

SEC. 5.[6] (a) As used in subsections (b) and (f) of this section, the term "civilian American citizen" means any person who, being then a citizen of the United States, was captured by the Imperial Japanese Government on or after December 7, 1941, at Midway, Guam, Wake Island, the Philippine Islands, or any Territory or possession of the United States attacked or invaded by such government, or while in transit to or from any such place, or who went into hiding at any such place in order to avoid capture or internment by such government: except (1) a person who at any time voluntarily gave aid to, collaborated with, or in any manner served such government, or (2) a person who at the time of his capture or entrance into hiding was a regularly appointed, enrolled, enlisted, or inducted member of any military or naval force.

(b) The Commission is authorized to receive, adjudicate according to law, and provide for the payment of any claim filed by, or on behalf of, any civilian American citizen for detention benefits for any period of time subsequent to December 6, 1941, during which he was held by the Imperial Japanese Government as a prisoner, internee, hostage, or in any other capacity, or remained in hiding to avoid being captured or interned by such Imperial Japanese Government.

(c) The detention benefit allowed to any person under the provisions of subsection (b) shall be at the rate of $60 for each calendar month during which such person was at least eighteen years of age and at the rate of $25 per month for each calendar month during which such person was less than eighteen years of age.

(d)[7] The detention benefits allowed under subsection (b) shall be allowed to the person entitled thereto, or, in the event of his death, only to the following persons:

(1) Widow or husband if there is no child or children of the deceased;

(2) Widow or husband and child or children of the deceased, one-half to the widow or husband and the other half to the child or children in equal shares;

(3) Child or children of the deceased (in equal shares) if there is no widow or husband; and

(4) Parents (in equal shares) if there is no husband, or child.

(e)[8] Any claim allowed by the Commission under this section (except under subsection (g)) shall be certified to the Secretary of the

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[6] Subsection (a) amended by Public Law 615, 83d Cong., approved August 21, 1954 (68 Stat. 760), and by Public Law 744, 83d Cong., approved August 31, 1954 (68 Stat. 1033).

[7] Subsection (d) amended by Public Law 744, 83d Cong., approved August 31, 1954 (68 Stat. 1034).

[8] Subsection (e) amended by Public Law 304, 82d Cong., approved April 9, 1952 (66 Stat. 49), and by Public Law 615, 83d Cong., approved August 21, 1954 (68 Stat. 769).

Treasury for payment out of the war claims funds [9] established by section 13 of this Act, and shall be payable by the Secretary of the Treasury to the person entitled thereto; except that where the person entitled to payment is under any legal disability, any part of the amount payable may, in the discretion of the Commission, be paid, for the use of the claimant, to the natural or legal guardian, committee, conservator, or curator of the claimant, or, if there is no such guardian, committee, conservator, or curator, then the Commission may, in its discretion, make payment to any other person, including the spouse of such claimant, whom the Commission may determine is vested with the care of the claimant or his estate for the use and benefit of such claimant or estate; and if such person is a minor, any part of the amount payable may, in the discretion of the Commission, be paid to such minor.

(f)[10] (1) Except as otherwise provided in this subsection, the provisions of titles I and II of the Act entitled "An Act to provide benefits for the injury, disability, death, or enemy detention of employees of contractors with the United States, and for other purposes", approved December 2, 1942, as amended, are extended and shall apply with respect to the injury, disability, or death resulting from injury of a civilian American citizen occurring while he was held by or in hiding from the Imperial Japanese Government, to the same extent as if such civilian American citizen were an employee within the purview of such Act of December 2, 1942, as amended.

(2) For the purpose of determining the benefits extended and made applicable by paragraph (1)—

(A) the average weekly wage of any such civilian American citizen, whether employed, self-employed, or not employed, shall be deemed to have been $37.50;

(B) the provisions of such Act shall be applicable whether or not any such civilian American citizen was employed;

(C) notice of injury or death shall not be required; and limitation provisions with respect to the filing of claims for injury, disability, or death shall not begin to run until the date of enactment of this section; and

(D) the monthly compensation in cases involving partial disability shall be determined by the percentage the degree of partial disability bears to total disability and shall not be determined with respect to the extent of loss of wage earning capacity.

(3) The following provisions of such Act of December 2, 1942, as amended, shall not apply in the case of such civilian American citizens: The last sentence of section 101 (a), section 101 (b), section 101 (d), section 104, and section 105.

(4) Rights or benefits which, under this subsection, are to be determined with reference to other provisions of law shall be determined with reference to such provisions of law as in force on January 3, 1948.

(5) The money benefit for disability or death shall be paid only to the person entitled thereto, or to his legal or natural guardian if he has one, and shall not upon death of the person so entitled survive for the benefit of his estate or any other person.

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[9] Should read "War Claims Fund".

[10] Subsection (f) amended by Public Law 744, 83d Cong., approved August 31, 1954 (68 Stat. 1033).

(6) The benefit of a minor or of an incompetent person who has no natural or legal guardian may, in the discretion of the Federal Security Administrator, be paid, in whole or in such part as he may determine for and on behalf of such minor or incompetent directly to the person or institution caring for, supporting, or having custody of such minor or incompetent.

(7) No person, except a widow or a child, shall be entitled to benefits for disability with respect to himself, and to death benefits on account of the death of another.

(8) If a civilian American citizen or his dependent receives or has received from the United States any payments on account of the same injury or death, or from his employer, in the form of wages, or payments in lieu of wages, or in any form of support or compensation (including workmen's compensation) in respect to the same objects, the benefits under this section shall be diminished by the amount of such payments in the following manner: (A) Benefits on account of injury or disability shall be reduced by the amount of payments to the injured person on account of the same injury or disability; and (B) benefits on account of death shall be reduced by the amount of payments to the dependents of the deceased civilian American citizen on account of the same death.

(9) This subsection shall take effect as of December 7, 1941, and the right of individuals to benefits shall be held to have begun to accrue as though this subsection had been in effect as of such date.

(10) No benefits provided by this subsection for injury, disability, or death shall accrue to any person who, without regard to this subsection, is entitled to or has received benefits for the same injury, disability, or death under such Act of December 2, 1942, as amended.

(11) No benefits provided by this subsection shall accrue to any person to whom benefits have been paid, or are payable, under the Federal Employees' Compensation Act, or any extension thereof, by reason of disability or death of an employee of the United States suffered after capture, detention, or other restraint by an enemy of the United States, when such disability or death is deemed, in the administration of the Federal Employees' Compensation Act, to have resulted from injury occurring while in the performance of duty, under subsection (b) of section 5 of the Act entitled "An Act to amend the Act entitled 'An Act to provide compensation for employees of the United States suffering injuries while in the performance of their duties, and for other purposes', as amended", approved July 28, 1945, as amended.

(g)[11] (1) As used in this subsection, the term "civilian American citizens"[12] means any person who, being then a citizen of the United States, was captured in Korea on or after June 25, 1950, by any hostile force with which the Armed Forces of the United States were actually engaged in armed conflict subsequent to such date and prior to the date of enactment of this subsection, or who went into hiding in Korea in order to avoid capture or internment by any such hostile force; except (A) a person who at any time voluntarily, knowingly, and without duress, gave aid to or collaborated with or in any manner

[11] Subsection (g) added by Public Law 615, 83d Cong., approved August 21, 1954 (68 Stat. 759).

[12] Should read "civilian American citizen".

served any such hostile force, or (B) a regularly appointed, enrolled, enlisted, or inducted member of the Armed Forces of the United States.

(2) The Commission is authorized to receive and to determine, according to law, the amount and validity, and provide for the payment of any claim filed by, or on behalf of, any civilian American citizen for detention benefits for any period of time subsequent to June 25, 1950, during which he was held by any such hostile force as a prisoner, internee, hostage, or in any other capacity, or remained in hiding to avoid being captured or interned by any such hostile force.

(3) The detention benefit allowed to any person under the provisions of paragraph (2) of this subsection shall be at the rate of $60 for each calendar month during which such person was at least eighteen years of age and at the rate of $25 per month for each calendar month during which such person was less than eighteen years of age.

(4) The detention benefits allowed under paragraph (2) of this subsection shall be allowed to the person entitled thereto, or, in the event of his death, only to the following persons:

(A) widow or husband if there is no child or children of the deceased;

(B) widow or dependent husband and child or children of the deceased, one-half to the widow or dependent husband and the other half to the child or children in equal shares;

(C) child or children of the deceased (in equal shares) if there is no widow or dependent husband.

(5) Any claim allowed by the Commission under this subsection shall be certified to the Secretary of the Treasury for payment out of funds appropriated pursuant to this subsection, and shall be paid by the Secretary of the Treasury to the person entitled thereto, except that where any person entitled to payment under this subsection is under any legal disability, payment may be made in accordance with the provisions of subsection (e) of this section.

(6) Each claim filed under this subsection must be filed not later than one year from whichever of the following dates last occurs:

(A) The date of enactment of this subsection;

(B) The date the civilian American citizen by whom the claim is filed returned to the jurisdiction of the United States; or

(C) The date upon which the Commission, at the request of a potentially eligible survivor, makes a determination that the civilian American citizen has actually died or may be presumed to be dead, in the case of any civilian American citizen who has not returned to the jurisdiction of the United States.

The Commission shall complete its determinations with respect to each claim filed under this subsection at the earliest practicable date, but in no event later than one year after the date on which such claim was filed.

(7) (A) There are hereby authorized to be appropriated such amounts as may be necessary to carry out the purposes of this subsection, including necessary administrative expenses.

(B) The Commission shall determine, from time to time, the share of its administrative expenses attributable to the performance of its functions under this subsection and make the appropriate adjustments in its accounts, and determinations and adjustments made pursuant to this subparagraph shall be final and conclusive.

PRISONERS OF WAR

SEC. 6. (a) [13] As used in subsection (b) of this section, the term "prisoner of war" means any regularly appointed, enrolled, enlisted, or inducted member of the military or naval forces of the United States who was held as a prisoner of war for any period of time subsequent to December 7, 1941, by any government of any nation with which the United States has been at war subsequent to such date.

(b) The Commission is authorized to receive, adjudicate according to law, and provide for the payment of any claim filed by any prisoner of war for compensation for the violation by the enemy government by which he was held as a prisoner of war, or its agents, of its obligation to furnish him the quantity or quality of food to which he was entitled as a prisoner of war under the terms of the Geneva Convention of July 27, 1929. The compensation allowed to any prisoner of war under the provisions of this subsection shall be at the rate of $1 for each day he was held as a prisoner of war on which the enemy government or its agents failed to furnish him such quantity or quality of food. Any claim allowed under the provisions of this subsection shall be certified to the Secretary of the Treasury for payment out of the War Claims Fund established by section 13 of this Act.

(c) [14] Claims pursuant to subsection (b) shall be paid to the person entitled thereto, and shall in case of death of the persons who are entitled be payable only to or for the benefit of the following persons:

(1) Widow or husband if there is no child or children of the deceased;

(2) Widow or husband and child or children of the deceased, one-half to the widow or husband and the other half to the child or children of the deceased in equal shares;

(3) Child or children of the deceased (in equal shares) if there is no widow or husband; and

(4) Parents (in equal shares) if there is no widow, husband, or child.

(d) [15] (1) As used in this subsection the term "prisoner of war" means any regularly appointed, enrolled, enlisted, or inducted member of the military or naval forces of the United States, who was held a prisoner of war for any period of time subsequent to December 7, 1941, by any government of any nation with which the United States has been at war subsequent to such date.

(2) The Commission is authorized to receive, adjudicate according to law, and to provide for the payment of any claim filed by any prisoner of war for compensation—

(A) for the violations by the enemy government by which he was held as a prisoner of war, or its agents, of such government's obligations under title III, section III, of the Geneva Convention of July 27, 1929, relating to labor of prisoners of war; or

(B) for inhumane treatment by the enemy government by which he was held, or its agents. The term "inhumane treatment" as used herein shall include, but not be limited to, violation

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[13] Subsection (a) amended by Public Law 303, 82d Cong., approved April 9, 1952 (66 Stat. 47).

[14] Subsection (c) amended by Public Law 866, 81st Cong., approved September 30, 1950 (64 Stat. 1090), by Public Law 304, 82d Cong., approved April 9, 1952 (66 Stat. 49), and by Public Law 744, 83d Cong., approved August 31, 1954 (68 Stat. 1034).

[15] Subsection (d) added by Public Law 303, 82d Cong., approved April 9, 1952 (66 Stat. 47); amended by Public Law 744, 83d Cong., approved August 31, 1954 (68 Stat. 1034).

by such enemy government, or its agents, of one or more of the provisions of articles 2, 3, 7, 10, 12, 13, 21, 22, 54, 56, or 57, of the Geneva Convention of July 27, 1929.

(3) Compensation shall be allowed to any prisoner of war under this subsection at the rate of $1.50 per day for each day he was held as a prisoner of war on which he alleges and proves in a manner acceptable to the Commission—

(A) the violation by such enemy government or its agents of the provisions of title III, section III, of the Geneva Convention of July 27, 1929; or

(B) any inhumane treatment as defined herein.

Any claim allowed under the provisions of this subsection shall be certified to the Secretary of the Treasury for payment out of the War Claims Fund established by section 13 of this Act. In no event shall the compensation allowed to any prisoner of war under this subsection exceed the sum of $1.50 with respect to any one day.

(4) Claims pursuant to subsection (d) (2) shall be paid to the person entitled thereto, or to his legal or natural guardian if he has one, and shall, in case of death of the persons who are entitled be payable only to or for the benefit of the following persons:

(A) widow or husband if there is no child or children of the deceased;

(B) widow or husband and child or children of the deceased, one-half to the widow or husband and the other half to the child or children of the deceased in equal shares;

(C) child or children of the deceased (in equal shares) if there is no widow or husband; and

(D) parents (in equal shares) if there is no widow, husband, or child.

(e)[16] (1) As used in this subsection the term "prisoner of war" means any regularly appointed, enrolled, enlisted, or inducted member of the Armed Forces of the United States who was held as a prisoner of war for any period of time subsequent to June 25, 1950, by any hostile force with which the Armed Forces of the United States were actually engaged in armed conflict subsequent to such date and prior to the date of enactment of this subsection, except any such member who, at any time, voluntarily, knowingly, and without duress, gave aid to or collaborated with or in any manner served any such hostile force.

(2) The Commission is authorized to receive and to determine, according to law, the amount and validity, and provide for the payment of any claim filed by any prisoner of war for compensation for the failure of the hostile force by which he was held as a prisoner of war, or its agents, to furnish him the quantity or quality of food prescribed for prisoners of war under the terms of the Geneva Convention of July 27, 1929. The compensation allowed to any prisoner of war under the provisions of this paragraph shall be at the rate of $1 for each day on which he was held as a prisoner of war and on which such hostile force, or its agents, failed to furnish him such quantity or quality of food.

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[16] Subsection (e) added by Public Law 615, 83d Cong., approved August 21, 1954 (68 Stat. 761).

(3) The Commission is authorized to receive and to determine, according to law, the amount and validity and provide for the payment of any claim filed by any prisoner of war for compensation—

(A) for the failure of the hostile force by which he was held as a prisoner of war, or its agents, to meet the conditions and requirements prescribed under title III, section III, of the Geneva Convention of July 27, 1929, relating to labor of prisoners of war; or

(B) for inhumane treatment by the hostile force by which he was held, or its agents. The term "inhumane treatment" as used herein shall include, but not be limited to, failure of such hostile force, or its agents, to meet the conditions and requirements of one or more of the provisions of articles 2, 3, 7, 10, 12, 13, 21, 22, 54, 56, or 57 of the Geneva Convention of July 27, 1929.

Compensation shall be allowed to any prisoner of war under this paragraph at the rate of $1.50 per day for each day on which he was held as a prisoner of war and with respect to which he alleges and proves in a manner acceptable to the Commission the failure to meet the conditions and requirements described in subparagraph (A) or the inhumane treatment described in subparagraph (B). In no event shall the compensation allowed to any prisoner of war under this paragraph exceed the sum of $1.50 with respect to any one day.

(4) Any claim allowed by the Commission under this subsection shall be certified to the Secretary of the Treasury for payment out of funds appropriated pursuant to this subsection and shall be paid by the Secretary of the Treasury to the person entitled thereto, and shall, in case of death or determination of death of the persons who are entitled, be paid only to or for the benefit of the persons specified, and in the order established, by paragraph (4) of subsection (d) of this section.

(5) Each claim filed under this subsection must be filed not later than one year from whichever of the following dates last occurs:

(A) The date of enactment of this subsection;

(B) The date the prisoner of war by whom the claim is filed returned to the jurisdiction of the Armed Forces of the United States; or

(C) The date upon which the Department of Defense makes a determination that the prisoner of war has actually died or is presumed to be dead, in the case of any prisoner of war who has not returned to the jurisdiction of the Armed Forces of the United States.

The Commission shall complete its determinations with respect to each claim filed under this subsection at the earliest practicable date, but in no event later than one year after the date on which such claim was filed.

(6) Any claim allowed under the provisions of this subsection shall be paid from funds appropriated pursuant to paragraph (7) of this subsection.

(7) (A) There are hereby authorized to be appropriated such amounts as may be necessary to carry out the purposes of this subsection, including necessary administrative expenses.

(B) The Commission shall determine, from time to time, the share of its administrative expenses attributable to the performance of its

functions under this subsection and make the appropriate adjustments in its accounts, and determinations and adjustments made pursuant to this subparagraph shall be final and conclusive.

(f) [17] Where any person entitled to payment under this section is under any legal disability, payment may be made in accordance with the provisions of subsection (e) of section 5.

RELIGIOUS ORGANIZATIONS

SEC. 7. (a) [18] The Commission is authorized to receive, adjudicate according to law, and provide for the payment of any claim filed by any religious organization functioning in the Philippine Islands and affiliated with a religious organization in the United States, or by the personnel of any such Philippine organization, for reimbursement of expenditures incurred, or for payment of the fair value of supplies used, by such organization or such personnel for the purpose of furnishing shelter, food, clothing, hospitalization, medicines and medical services, and other relief in the Philippines to members of the armed forces of the United States or to civilian American citizens (as defined in section 5) at any time subsequent to December 6, 1941, and before August 15, 1945. Any claim allowed under the provisions of this section shall be certified to the Secretary of the Treasury for payment out of the War Claims Fund established by section 13 of this Act.

(b) That any such religious organization or its personnel functioning in the Philippines and affiliated with a religious organization in the United States, which furnished relief in the Philippines to members of the Armed Forces of the United States or to civilian American citizens in accordance with the provisions of subsection (a) shall be compensated from the War Claims Fund, as hereinafter provided, for the loss and damage sustained as a consequence of the war to its schools, colleges, universities, scientific observatories, hospitals, dispensaries, orphanages, and other property or facilities connected with its educational, medical, or welfare work.

(c) That any such affiliated organization furnishing relief which possessed any interest in, and whose personnel of American citizens substantially composed the administrative staff of, any hospital whose prewar facilities and capacity have not been restored shall be compensated in an amount sufficient to enable such organization to replace the hospital's facilities and capacity equal to that which existed at the time of the outbreak of the war, irrespective of what disposition was made subsequently of the land, buildings, and contents.

(d) That claims filed pursuant to subsection (b) shall be determined and paid upon the basis of postwar cost of replacement which shall be ascertained by the War Claims Commission. In making such determinations the Commission shall utilize but not be limited to the factual information and evidence contained in the records of the Philippine War Damage Commission; the technical advice of experts in the field; the substantiating evidence submitted by the claimants; and any other technical and legal means by which fair and equitable postwar replacement costs shall be determined.

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[17] Subsection (f) added as subsection (d) by Public Law 304, 82d Cong., approved April 9, 1952 (66 Stat. 49), redesignated as subsection (f) by Public Law 615, 83d Cong., approved August 21, 1954 (68 Stat. 761).

[18] Section 7 was redesignated as section 7 (a), and subsections (b) through (g) were added to section 7 by Public Law 303, 82d Cong., approved April 9, 1952 (66 Stat. 48).

(e) The Commission is hereby authorized and directed to proceed at once with the necessary investigation, study, and establishment of procedures in order to determine the replacement costs of the claims to be filed under subsections (b) and (c), using as a basis for beginning such investigation and study the evidence contained in the claims of those religious organizations or their personnel which have already filed and are eligible to be paid under the terms of subsection (a) of this section.

(f) All claims under subsections (b) and (c) must be filed on or before October 1, 1952; and not later than March 31, 1953, the Commission shall adjudicate according to law and provide for the payment of any claim filed pursuant to this section. In any case in which any money is payable as a result of subsections (b) and (c) to a religious organization or its personnel functioning in the Philippines, such money shall be paid upon request of such organization to its affiliate in the United States: *Provided*, That all money thus paid to such affiliated religious organization in the United States shall be used by such affiliate for the purpose of restoring the educational, medical, and welfare facilities described in subsections (b) and (c) and located in the Philippines.

(g) The Commission shall expedite the payments under this section without reducing payment of claims of American civilian internees and prisoners of war filed before March 31, 1953, pursuant to the provisions of sections 5 and 6 of this Act.

REPORT WITH RESPECT TO PERSONAL INJURY AND PROPERTY CLAIMS

SEC. 8. (a)[19] The Commission shall inquire into and report to the President, for submission of such report to the Congress on or before March 31, 1950, with respect to war claims arising out of World War II, other than claims which may be received and adjudicated under the preceding sections of this Act, and shall present in such report its findings on—

(1) the estimated number and amount of such claims, classified by types and categories; and

(2) the extent to which such claims have been or may be satisfied under international agreements or domestic or foreign laws.

(b) The report of the Commission shall contain recommendations with respect to—

(1) categories and types of claims, if any, which should be received and considered and the legal and equitable bases therefor;

(2) the administrative method by which such claims should be considered, and any priorities or limitations which should be applicable; and

(3) any limitations which should be applied to the allowance and payment of fees in connection with such claims.

(c) The Commission shall include in such report—

(1) such other recommendations as it deems appropriate; and

(2) such proposals for legislation as it deems appropriate for carrying out the recommendations made in such report.

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[19] Subsection (a) amended by Public Law 75, 81st Cong., approved May 27, 1949 (63 Stat. 112). A report was transmitted to Congress on May 3, 1950, and was printed as House Document No. 580, 81st Cong., 2d sess.; a supplementary report was transmitted to Congress on January 16, 1953, and was printed as House Document No. 67, 83d Cong., 1st sess.

(d) Such report, with accompanying evidence, shall be printed as a public document when received by the Congress.

(e) Nothing in this section shall be deemed to imply that the Congress will enact legislation—

(1) adopting any recommendations made under this section with respect to the consideration or payment of any type of claim; or

(2) making any moneys, including moneys remaining in the war claims fund after the making of payments from such fund provided for by this Act, available for the payment of such claims.

REPORTS TO CONGRESS

SEC. 9. Not later than six months after its organization, and every six months thereafter, the Commission shall make a report to the Congress concerning its operations under this Act.

REMUNERATION FOR SERVICES IN CONNECTION WITH CLAIMS

SEC. 10. No remuneration on account of services rendered or to be rendered to or on behalf of any claimant in connection with any claim filed with the administering agency under this Act shall exceed 10 per centum (or such lesser per centum as may be fixed by the administering agency with respect to any class of claims) of the amount allowed by the administering agency on account of such claim. Any agreement to the contrary shall be unlawful and void. Whoever, in the United States or elsewhere, pays or offers to pay, or promises, to pay, or receives, on account of services rendered or to be rendered in connection with any such claim, any remuneration in excess of the maximum permitted by this section, shall be deemed guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $5,000 or imprisoned not more than twelve months, or both, and, if any such payment shall have been made or granted, the administering agency shall take such action as may be necessary to recover the same, and, in addition thereto any such claimant shall forfeit all rights under this Act.

HEARINGS WITH RESPECT TO CLAIMS

SEC. 11. The Commission shall notify all claimants of the approval or denial of their claims, and, if approved, shall notify such claimants of the amount for which such claims are approved. Any claimant whose claim is denied, or is approved for less than the full allowable amount of such claim, shall be entitled, under such regulations as the Commission may prescribe, to a hearing before the Commission or its representatives with respect to such claim. Upon such hearing, the Commission may affirm, modify, or revise its former action with respect to such claim, including a denial or reduction in the amount theretofore allowed with respect to such claim. The action of the Commission in allowing or denying any claim under this Act shall be final and conclusive on all questions of law and fact and not subject to review by any other official of the United States or by any court by mandamus or otherwise, and the Comptroller General is authorized

and directed to allow credit in the accounts of any certifying or disbursing officer for payments in accordance with such action.

NOTE.—Section 12 amended section 39 of the Trading With the Enemy Act.

WAR CLAIMS FUND

SEC. 13.[20] (a) There is hereby created on the books of the Treasury of the United States a trust fund to be known as the War Claims Fund. The War Claims Fund shall consist of all sums covered into the Treasury pursuant to the provisions of section 39 of the Trading With the Enemy Act of October 6, 1917, as amended. The moneys in such fund shall be available for expenditure only as provided in this Act or as may be provided hereafter by the Congress.

(b) Before August 1, 1956, the Secretary of Labor shall estimate and report to the President the total amount which will be required to pay all benefits payable by reason of section 5 (f) of this Act. If the President approves the amount so estimated as reasonably accurate, the total amount so estimated and approved shall be certified to the Secretary of the Treasury; if the President does not so approve he shall determine such amount, and the amount so determined shall be certified to the Secretary of the Treasury. Such certification shall be made on or before September 1, 1956. The Secretary of the Treasury shall then transfer from the War Claims Fund to the general fund of the Treasury a sum equal to the total amount certified to him under this subsection.

(c) Before August 1, 1956, the Secretary of Labor shall estimate and report to the President the total amount which will be required to pay all additional benefits payable as a result of the enactment of section 4 (c) of this Act. If the President approves the amount so estimated as reasonably accurate, the total amount so estimated and approved shall be certified to the Secretary of the Treasury; if the President does not so approve, he shall determine such amount, and the amount so determined shall be certified to the Secretary of the Treasury. Such certification shall be made on or before September 1, 1956. The Secretary of the Treasury shall then transfer from the War Claims Fund to the general fund of the Treasury a sum equal to the total amount certified to him under this subsection.

(d) On or before August 1, 1956, the Secretary of State is authorized and directed to certify to the Secretary of the Treasury the total amount of all obligations canceled pursuant to the provisions of section 4 (b) (1) of this Act. The Secretary of the Treasury shall transfer from the war claims fund to the general fund of the Treasury an amount equal to the total amount so certified.

(e) There are hereby authorized to be appropriated, out of any money in the war claims fund, such sums as may be necessary to enable the Commission to carry out its functions under this Act.

PAYMENTS TO CERTAIN MEMBERS OF RELIGIOUS ORDERS

SEC. 14. In any case in which any money is payable as a result of the enactment of this Act to any person who is prevented from accepting such money by the rules, regulations, or customs of the church or the

[20] Subsections (b), (c), and (d) amended by Public Law 744, 83d Cong., approved August 31, 1954 (68 Stat. 1036).

religious order or organization of which he is a member, such money shall be paid, upon the request of such person, to such church or to such religious order or organization.

SEC. 15.[21] (a) The Commission is authorized to receive and to determine, according to law, the amount and validity, and provide for the payment of any claim for compensation filed by or on behalf of any individual who, being then an American citizen, served in the military or naval forces of any government allied with the United States during World War II who was held as a prisoner of war for any period of time subsequent to December 7, 1941, by any government of any nation with which such allied government has been at war subsequent to such date. Compensation shall be payable under this section in accordance with the standards established by, and at the rates prescribed in, subsection (b) of section 6 of this Act, and paragraphs (2) and (3) of subsection (d) of such section 6.

(b) The amount payable under this section shall be reduced by such sum as the individual entitled to compensation under this section has received or is entitled to receive from any government by reason of the same detention.

(c) In the event of death of the individual entitled to compensation under this section, payment may be made to the persons specified in paragraph (4) of subsection (d) of section 6 of this Act.

(d) Claims for benefits under this section must be filed within one year after the date of enactment of this section.

(e) Any claim allowed under the provisions of this section shall be certified to the Secretary of the Treasury for payment out of the War Claims Fund established by section 13 of this Act.

SEC. 16.[22] (a) As used in this section, the term "merchant seaman" means any individual who was employed as a seaman or crew member on any vessel registered under the laws of the United States, or under the laws of any government friendly to the United States during World War II, and who was a citizen of the United States on and after December 7, 1941, to the date of his death or the date of filing claim under this section; except any such individual who is entitled to, or who has received, benefits under section 5 of this Act as a "civilian American citizen".

(b) The Commission is authorized to receive and determine, according to law, the amount and validity, and provide for the payment of any claim for detention benefits filed by or on behalf of any merchant seaman who, being then a merchant seaman, was captured or interned or held by the Government of Germany or the Imperial Japanese Government, its agents or instrumentalities in World War II for any period of time subsequent to December 7, 1941, during which he was held by either such government as a prisoner, internee, hostage, or in any other capacity. Detention benefits shall be paid under this section at the rates prescribed and in the manner provided in subsections (c) and (d) of section 5 of this Act.

(c) Payment of any claim filed under this section shall not be made to any merchant seaman, or to any survivor or survivors thereof, who, voluntarily, knowingly, and without duress, gave aid to or col-

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[21] Section 15 added by Public Law 744, 83d Cong., approved August 31, 1954 (68 Stat. 1034).

[22] Section 16 added by Public Law 744, 83d Cong., approved August 31, 1954 (68 Stat. 1034).

laborated with or in any manner served any government hostile to the United States during World War II.

(d) Claims for benefits under this section must be filed within one year after the date of enactment of this section.

(e) Any claim allowed under the provisions of this section shall be certified to the Secretary of the Treasury for payment out of the War Claims Fund established by section 13 of this Act.

SEC. 17.[28] (a) (1) The Commission is authorized to receive and to determine, according to law, the amount and validity, and provide for the payment of any claim filed by—

(A) any individual who—

(i) on or after December 7, 1941, was a member of the military or naval forces of the United States;

(ii) is the survivor of any deceased individual described in subparagraph (i);

(iii) was a national of the United States on December 7, 1941, and is a national of the United States on the date of enactment of this section; or

(iv) is the survivor of any deceased individual who was a national of the United States on December 7, 1941, and would be a national of the United States on the date of enactment of this section if living; or

(B) any partnership, firm, corporation, or other legal entity, in which more than 50 per centum of the ownership was vested, directly or indirectly, both on December 7, 1941, and on the date of enactment of this section, in individuals referred to in subparagraph (A) of this paragraph;

for losses arising as a result of the sequestration of accounts, deposits, or other credits of such individual or legal entity in the Philippines by the Imperial Japanese Government.

(2) The Commission is authorized to receive and to determine, according to law, the amount and validity, and provide for the payment of any claim filed by any bank or other financial institution doing business in the Philippines which reestablished sequestered accounts, deposits, or other credits of—

(A) any individual referred to in subparagraph (A) of paragraph (1) of this subsection; or

(B) any partnership, firm, corporation, or other legal entity, in which more than 50 per centum of the ownership was vested, directly or indirectly, both on December 7, 1941, and on the date of reestablishment of such sequestered credits, in individuals referred to in such subparagraph (A);

for reimbursement of the amounts of such sequestered credits paid by such bank or financial institution.

(b) Claims must be filed under this section within one year after the date of enactment of this section.

(c) Where any individual entitled to payment under this section is under any legal disability, payment may be made in accordance with the provisions of subsection (e) of section 5 of this Act. In the case of the death of any individual entitled to payment of any claim under this section, payment of such claim shall be made to the individuals

[28] Section 17 added by Public Law 744, 83d Cong., approved August 31, 1954 (68 Stat. 1035).

specified, and in the order provided, in subsection (d) of section 6 of this Act; except that no payment shall be made under this section to any individual who voluntarily, knowingly, and without duress, gave aid to or collaborated with or in any manner served any government hostile to the United States during World War II.

(d) Each claim allowed under this section shall be certified to the Secretary of the Treasury for payment out of the War Claims Fund established under section 13 of this Act. The Secretary of the Treasury shall pay such claims as follows:

(1) In the case of each claim allowed in an amount equal to or less than $500, such claim shall be paid in full; and

(2) In the case of each claim allowed in an amount greater than $500, such claim shall be paid in two installments. The first installment shall be paid in an amount equal to $500 plus 66⅔ per centum of the amount of such claim allowed in excess of $500. The last installment shall be computed as of September 1, 1956, under the next sentence of this paragraph, and, as so computed, shall be paid from the sums remaining in the War Claims Fund on that date. If the sums remaining in the War Claims Fund on September 1, 1956, are sufficient to satisfy all claims allowed under this section and not paid in full, the unpaid portion of each such claim shall be paid in full; if the sums remaining in the War Claims Fund on September 1, 1956, are not sufficient to satisfy all claims allowed under this section and not paid in full, the last installment payable on each such claim shall be reduced ratably, and, as so reduced, shall be paid from the War Claims Fund.

Approved July 3, 1948.

INTERNATIONAL CLAIMS SETTLEMENT ACT OF 1949, AS AMENDED

INCLUDING SPECIFIC AMENDMENTS MADE PRIOR TO JANUARY 3, 1956

INTERNATIONAL CLAIMS SETTLEMENT ACT OF 1949, AS AMENDED

[PUBLIC LAW 455—81ST CONGRESS]

[§§ 1, 2, 3] [64 Stat. 12]

AN ACT To provide for the settlement of certain claims of the Government of the United States on its own behalf and on behalf of American nationals against foreign governments.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "International Claims Settlement Act of 1949".

TITLE I[1]

SEC. 2. For the purposes of this title—

(a) The term "person" shall include an individual, partnership, corporation, or the Government of the United States.

(b) The term "United States" when used in a geographical sense shall include the United States, its Territories and insular possessions, and the Canal Zone.

(c) The term "nationals of the United States" includes (1) persons who are citizens of the United States, and (2) persons who, though not citizens of the United States, owe permanent allegiance to the United States. It does not include aliens.

(d) The term "Yugoslav Claims Agreement of 1948" means the agreement between the Governments of the United States of America and of the Federal People's Republic of Yugoslavia regarding pecuniary claims of the United States and its nationals, signed July 19, 1948.

SEC. 3. (a) There is hereby established in the Department of State a commission to be known as the International Claims Commission of the United States[2] (hereinafter referred to as the "Commission") and to be composed of three persons, to be appointed by the President by and with the advice and consent of the Senate. One of such members shall be designated by the President as the Chairman of the Commission and each shall receive compensation at the rate of $15,000 per annum. Two members of the Commission shall constitute a quorum for the transaction of business. Any vacancy that may occur in the membership of the Commission shall be filled in the same manner as in the case of an original appointment: *Provided*, That in the event of the death, resignation, absence, or disability of a member,

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[1] Public Law 285, 84th Cong., approved August 9, 1955 (69 Stat. 562), amended the International Claims Settlement Act of 1949 by inserting "TITLE I" before section 2, and by amending the word "Act", wherever appearing in title I in reference to the International Claims Settlement Act of 1949, to read "title".

[2] The International Claims Commission of the United States was abolished and its functions transferred to the Foreign Claims Settlement Commission of the United States by Reorganization Plan No. 1, effective July 1, 1954, reproduced at page 154 of this booklet.

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the President may designate an acting member from among persons in the judicial or in the executive branch of the Government (including employees of the Commission), who possess the qualifications prescribed by this subsection, to temporarily perform without additional compensation the duties of the member until a successor is appointed or the absence or disability of the member shall cease.

(b) The principal office of the Commission shall be in the District of Columbia. The Secretary of State, in accordance with the provisions of the civil-service laws and the Classification Act of 1949,[3] as amended, upon the recommendation of the Commission, may appoint and fix the compensation of an executive director, and of officers, attorneys, investigators, and other employees.

(c) [4] The Commission may prescribe such rules and regulations as may be necessary to enable it to carry out its functions, and may delegate functions to any member, officer, or employee of the Commission. The President may fix a termination date for the authority of the Commission, and the terms of office of its members under this title. Any member of the Commission may be removed by the Secretary of State, upon notice and hearing, for neglect of duty, or malfeasance in office, but for no other cause. Not later than six months after its organization, and every six months thereafter, the Commission shall make a report, through the Secretary of State, to the Congress concerning its operations under this title. The Commission shall, upon completion of its work, certify in duplicate to the Secretary of State and to the Secretary of the Treasury the following: (1) A list of all claims disallowed; (2) a list of all claims allowed, in whole or in part, together with the amount of each claim and the amount awarded thereon; and (3) a copy of the decision rendered in each case.

No members of such Commission shall be appointed after the effective date of this title until such Commission is reorganized by further Act of Congress but acting members may be designated by the President as provided by this section, who shall receive no compensation from the funds appropriated by H. R. 6200 for defraying the expenses of such Commission.

SEC. 4. (a) The Commission shall have jurisdiction to receive, examine, adjudicate, and render final decisions with respect to claims of the Government of the United States and of nationals of the United States included within the terms of the Yugoslav Claims Agreement of 1948, or included within the terms of any claims agreement hereafter concluded between the Government of the United States and a foreign government (exclusive of governments against which the United States declared the existence of a state of war during World War II) similarly providing for the settlement and discharge of claims of the Government of the United States and of nationals of the United States against a foreign government, arising out of the nationalization or other taking of property, by the agreement of the Government of the United States to accept from that government a sum in en bloc settlement thereof. In the decision of claims under this title, the Commission shall apply the following in the following order:

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[3] See section 1106 (a) and section 1202 (1) of the Classification Act of 1949 (63 Stat. 972).

[4] Amended by Public Law 242, 83d Cong., approved August 8, 1953 (67 Stat. 506).

(1) The provisions of the applicable claims agreement as provided in this subsection; and (2) the applicable principles of international law, justice, and equity.

(b) The Commission shall give public notice of the time when, and the limit of time within which, claims may be filed, which notice shall be published in the Federal Register. In addition, the Commission is authorized and directed to mail a similar notice to the last-known address of each person appearing in the records of the Department of State as having indicated an intention of filing a claim with respect to a matter concerning which the Commission has jurisdiction under this title. All decisions shall be upon such evidence and written legal contentions as may be presented within such period as may be prescribed therefor by the Commission, and upon the results of any independent investigation of cases which the Commission may deem it advisable to make. Each decision by the Commission pursuant to this title shall be by majority vote, and shall state the reason for such decision, and shall constitute a full and final disposition of the case in which the decision is rendered.

(c) Any member of the Commission, or any employee of the Commission, designated in writing by the Chairman of the Commission, may administer oaths and examine witnesses. Any member of the Commission may require by subpena the attendance and testimony of witnesses, and the production of all necessary books, papers, documents, records, correspondence, and other evidence, from any place in the United States at any designated place of inquiry or of hearing. The Commission is authorized to contract for the reporting of inquiries or of hearings. Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid witnesses in the courts of the United States. In case of disobedience to a subpena, the aid of any district court of the United States, as constituted by chapter 5 of title 28, United States Code (28 U. S. C. 81 and the following), and the United States court of any Territory or other place subject to the jurisdiction of the United States may be invoked in requiring the attendance and testimony of witnesses and the production of such books, papers, documents, records, correspondence, and other evidence. Any such court within the jurisdiction of which the inquiry or hearing is carried on may, in case of contumacy or refusal to obey a subpena issued to any person, issue an order requiring such person to appear or to give evidence touching the matter in question; and any failure to obey such order of the court may be punished by such court as a contempt thereof.

(d) The Commission may order testimony to be taken by deposition in any inquiry or hearing pending before it at any stage of such proceeding or hearing. Such depositions may be taken, under such regulations as the Commission may prescribe, before any person designated by the Commission and having power to administer oaths. Any person may be compelled to appear and depose, and to produce books, papers, documents, records, correspondence, and other evidence in the same way as witnesses may be compelled to appear and testify and produce documentary evidence before the Commission, as hereinabove provided. If a witness whose testimony may be desired to be taken by deposition be in a foreign country, the deposition may be taken, provided the laws of the foreign country so permit, by a consular officer, or by an officer or employee of the Commission, or other

person commissioned by the Commission, or under letters rogatory issued by the Commission. Witnesses whose depositions are taken as authorized in this subsection, and the persons taking the same, shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(e) In addition to the penalties provided in title 18, United States Code, section 1001, any person guilty of any act, as provided therein, with respect to any matter under this title, shall forfeit all rights under this title, and, if payment shall have been made or granted, the Commission shall take such action as may be necessary to recover the same.

(f) In connection with any claim decided by the Commission pursuant to this title in which an award is made, the Commission may, upon the written request of the claimant or any attorney heretofore or hereafter employed by such claimant, determine and apportion the just and reasonable attorney's fees for services rendered with respect to such claim, but the total amount of the fees so determined in any case shall not exceed 10 per centum of the total amount paid pursuant to the award. Written evidence that the claimant and any such attorney have agreed to the amount of the attorney's fees shall be conclusive upon the Commission: *Provided, however*, That the total amount of the fees so agreed upon does not exceed 10 per centum of the total amount paid pursuant to the award. Any fee so determined shall be entered as a part of such award, and payment thereof shall be made by the Secretary of the Treasury by deducting the amount thereof from the total amount paid pursuant to the award. Any agreement to the contrary shall be unlawful and void. The Commission is authorized and directed to mail to each claimant in proceedings before the Commission notice of the provisions of this subsection. Whoever, in the United States or elsewhere, pays or offers to pay, or promises to pay, or receives on account of services rendered or to be rendered in connection with any such claim, compensation which, when added to any amount previously paid on account of such services, will exceed the amount of fees so determined by the Commission, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $5,000 or imprisoned not more than twelve months, or both, and if any such payment shall have been made or granted, the Commission shall take such action as may be necessary to recover the same, and, in addition thereto, any such person shall forfeit all rights under this title.

(g) The Attorney General shall assign such officers and employees of the Department of Justice as may be necessary to represent the United States as to any claims of the Government of the United States with respect to which the Commission has jurisdiction under this title. Any and all payments required to be made by the Secretary of the Treasury under this title pursuant to any award made by the Commission to the Government of the United States shall be covered into the Treasury to the credit of miscellaneous receipts.

(h) The Commission shall notify all claimants of the approval or denial of their claims, stating the reasons and grounds therefor, and, if approved, shall notify such claimants of the amount for which such claims are approved. Any claimant whose claim is denied, or is approved for less than the full amount of such claim, shall be entitled, under such regulations as the Commission may prescribe, to

a hearing before the Commission, or its duly authorized representatives, with respect to such claim. Upon such hearing, the Commission may affirm, modify, or revise its former action with respect to such claim, including a denial or reduction in the amount theretofore allowed with respect to such claim. The action of the Commission in allowing or denying any claim under this title shall be final and conclusive on all questions of law and fact and not subject to review by the Secretary of State or any other official, department, agency, or establishment of the United States or by any court by mandamus or otherwise.

(i) The Commission may in its discretion enter an award with respect to one or more items deemed to have been clearly established in an individual claim while deferring consideration and action on other items of the same claim.

(j) The Commission shall comply with the provisions of the Administrative Procedure Act of 1946 except as otherwise specifically provided by this title.

SEC. 5. The Commission shall, as soon as possible, and in the order of the making of such awards, certify to the Secretary of the Treasury and to the Secretary of State copies of the awards made in favor of the Government of the United States or of nationals of the United States under this title. The Commission shall certify to the Secretary of State, upon his request, copies of the formal submissions of claims filed pursuant to subsection (b) of section 4 of this title for transmission to the foreign government concerned.

SEC. 6.[5] The Commission shall complete its affairs in connection with settlement of United States-Yugoslav claims arising under the Yugoslav Claims Agreement of 1948 not later than December 31, 1954: *Provided*, That nothing in this provision shall be construed to limit the life of the Commission, or its authority to act on future agreements which may be effected under the provisions of this legislation.

SEC. 7. (a) Subject to the limitations hereinafter provided, the Secretary of the Treasury is authorized and directed to pay, as prescribed by section 8 of this title, an amount not exceeding the principal of each award, plus accrued interest on such awards as bear interest, certified pursuant to section 5 of this title, in accordance with the award. Such payments, and applications for such payments, shall be made in accordance with such regulations as the Secretary of the Treasury may prescribe.

(b)[6] There shall be deducted from the amount of each payment made pursuant to subsection (c) of section 8, as reimbursement for the expenses incurred by the United States, an amount equal to 5 per centum of such payment. All amounts so deducted shall be covered into the Treasury to the credit of miscellaneous receipts.

(c) Payments made pursuant to this title shall be made only to the person or persons on behalf of whom the award is made, except that—

(1) if such person is deceased or is under a legal disability, payment shall be made to his legal representative: *Provided*, That if the total award is not over $500 and there is no qualified executor or administrator, payment may be made to the person or persons found by the Comptroller General of the United States

[5] Amended by Public Law 242, 83d Cong., approved August 8, 1953 (67 Stat. 506).
[6] Amended by Public Law 242, 83d Cong., approved August 8, 1953 (67 Stat. 506).

to be entitled thereto, without the necessity of compliance with the requirements of law with respect to the administration of estates;

(2) in the case of a partnership or corporation, the existence of which has been terminated and on behalf of which an award is made, payment shall be made, except as provided in paragraphs (3) and (4), to the person or persons found by the Comptroller General of the United States to be entitled thereto;

(3) if a receiver or trustee for any such partnership or corporation has been duly appointed by a court of competent jurisdiction in the United States and has not been discharged prior to the date of payment, payment shall be made to such receiver or trustee in accordance with the order of the court;

(4) if a receiver or trustee for any such partnership or corporation, duly appointed by a court of competent jurisdiction in the United States, makes an assignment of the claim, or any part thereof, with respect to which an award is made, or makes an assignment of such award, or any part thereof, payment shall be made to the assignee, as his interest may appear; and

(5) in the case of any assignment of an award, or any part thereof, which is made in writing and duly acknowledged and filed, after such award is certified to the Secretary of the Treasury, payment may, in the discretion of the Secretary of the Treasury, be made to the assignee, as his interest may appear.

(d) Whenever the Secretary of the Treasury, or the Comptroller General of the United States, as the case may be, shall find that any person is entitled to any such payment, after such payment shall have been received by such person, it shall be an absolute bar to recovery by any other person against the United States, its officers, agents, or employees with respect to such payment.

(e) Any person who makes application for any such payment shall be held to have consented to all the provisions of this title.

(f) Nothing in this title shall be construed as the assumption of any liability by the United States for the payment or satisfaction, in whole or in part, of any claim on behalf of any national of the United States against any foreign government.

SEC. 8. (a) There are hereby created in the Treasury of the United States (1) a special fund to be known as the Yugoslav Claims Fund; and (2) such other special funds as may, in the discretion of the Secretary of the Treasury, be required, each to be a claims fund to be known by the name of the foreign government which has entered into a settlement agreement with the Government of the United States as described in subsection (a) of section 4 of this title. There shall be covered into the Treasury to the credit of the proper special fund all funds hereinafter specified. All payments authorized under section 7 of this title shall be disbursed from the proper fund, as the case may be, and all amounts covered into the Treasury to the credit of the aforesaid funds are hereby permanently appropriated for the making of the payments authorized by section 7 of this title.

(b) The Secretary of the Treasury is authorized and directed to cover into—

(1) the Yugoslav Claims Fund the sum of $17,000,000 being the amount paid by the Government of the Federal People's

Republic of Yugoslavia pursuant to the Yugoslav Claims Agreement of 1948;

(2) a special fund created for that purpose pursuant to subsection (a) of this section any amounts hereafter paid, in United States dollars, by a foreign government which has entered into a claims settlement agreement with the Government of the United States as described in subsection (a) of section 4 of this title.

(c) The Secretary of the Treasury is authorized and directed out of the sums covered into any of the funds pursuant to subsection (b) of this section, and after making the deduction provided for in section 7 (b) of this title—

(1) to make payments in full of the principal of awards of $1,000 or less, certified pursuant to section 5 of this title;

(2) to make payments of $1,000 on the principal of each award of more than $1,000 in principal amount, certified pursuant to section 5 of this title;

(3) to make additional payment of not to exceed 25 per centum of the unpaid principal of awards in the principal amount of more than $1,000;

(4) after completing the payments prescribed by paragraphs (2) and (3) of this subsection, to make payments, from time to time in ratable proportions, on account of the unpaid principal of all awards in the principal amount of more than $1,000, according to the proportions which the unpaid principal of such awards bear to the total amount in the fund available for distribution at the time such payments are made; and

(5) after payment has been made of the principal amounts of all such awards, to make pro rata payments on account of accrued interest on such awards as bear interest.

(d) The Secretary of the Treasury, upon the concurrence of the Secretary of State, is authorized and directed, out of the sum covered into the Yugoslav Claims Fund pursuant to subsection (b) of this section, after completing the payments of such funds pursuant to subsection (c) of this section, to make payment of the balance of any sum remaining in such fund to the Government of the Federal People's Republic of Yugoslavia to the extent required under article 1 (c) of the Yugoslav Claims Agreement of 1948. The Secretary of State shall certify to the Secretary of the Treasury the total cost of adjudication, not borne by the claimants, attributable to the Yugoslav Claims Agreement of 1948. Such certification shall be final and conclusive and shall not be subject to review by any other official, or department, agency, or establishment of the United States.

SEC. 9. There is hereby authorized to be appropriated, out of any money in the Treasury not otherwise appropriated, such sums as may be necessary to enable the Commission to carry out its functions under this title.

TITLE II[7]

VESTING AND LIQUIDATION OF BULGARIAN, HUNGARIAN, AND RUMANIAN PROPERTY

SEC. 201. As used in this title the term—

(1) "Person" means a natural person, partnership, association, other unincorporated body, corporation, or body politic.

[7] Title II added by Public Law 285, 84th Cong., approved August 9, 1955 (69 Stat. 562).

(2) "Property" means any property, right, or interest.

(3) "Treaty of peace", with respect to a country, means the treaty of peace with that country signed at Paris, France, February 10, 1947, which came into force between that country and the United States on September 15, 1947.

SEC. 202. (a) In accordance with article 25 of the treaty of peace with Bulgaria, article 29 of the treaty of peace with Hungary, and article 27 of the treaty of peace with Rumania, any property which was blocked in accordance with Executive Order 8389 of April 10, 1940, as amended, and remains blocked on the effective date of this title, and which, as of September 15, 1947, was owned directly or indirectly by Bulgaria, Hungary, and Rumania or by any national thereof as defined in such Executive order, shall vest in such officer or agency as the President may from time to time designate and shall vest when, as, and upon such terms as the President or his designee shall direct. Such property shall be sold or otherwise liquidated as expeditiously as possible after vesting under such rules and regulations as the President or his designee may prescribe. The net proceeds remaining upon completion of the administration and liquidation thereof, including the adjudication of any suits or claims with respect thereto under sections 207 and 208, shall be covered into the Treasury. Notwithstanding the preceding provisions of this subsection, any such property determined by the President or his designee to be owned directly by a natural person shall not be vested under this subsection but shall remain blocked subject to release when, as, and upon such terms as the President or his designee may prescribe. If, at any time within one year from the date of the vesting of any property under this subsection, the President or his designee shall determine that it was directly owned at the date of vesting by a natural person, then the President or his designee shall divest such property and restore it to its blocked status prior to vesting, subject to release when, as, and upon such terms as the President or his designee may prescribe, or if such property has been liquidated, shall divest the net proceeds thereof and carry them in blocked accounts with the Treasury, bearing no interest, in the name of the owner thereof at the date of vesting, subject to release when, as, and upon such terms as the President or his designee may prescribe.

(b) The net proceeds of any property which was vested in the Alien Property Custodian or the Attorney General after December 17, 1941, pursuant to the Trading With the Enemy Act, as amended, and which at the date of vesting was owned directly or indirectly by Bulgaria, Hungary, or Rumania, or any national thereof, shall after completion of the administration, liquidation, and disposition of such property pursuant to such Act, including the adjudication of any suits or claims with respect thereto under such Act, be covered into the Treasury, except that the net proceeds of any such property which the President or his designee shall determine was directly owned by a natural person at the date of vesting shall be divested by the President or such officer or agency as he may designate and carried in blocked accounts with the Treasury, bearing no interest, in the name of the owner thereof at the date of vesting, subject to release when, as, and upon such terms as the President or his designee may prescribe.

(c) The determination under this section that any vested property

was not directly owned by a natural person at the date of vesting shall be within the sole discretion of the President or his designee and shall not be subject to review by any court.

(d) The President or his designee may require any person to furnish, in the form of reports or otherwise, complete information, including information with regard to past transactions, relative to any property blocked under Executive Order 8389 of April 10, 1940, as amended, or as may be otherwise necessary to enforce the provisions of this section; and the President or his designee may require of any person the production of any books of account, records, contracts, letters, memoranda, or other papers relative to such property or as may be otherwise necessary to enforce the provisions of this section.

SEC. 203. Whenever shares of stock or other beneficial interest in any corporation, association, or company or trust are vested in any officer or agency designated by the President under this title, it shall be the duty of the corporation, association, or company or trustee or trustees issuing such shares or any certificates or other instruments representing the same or any other beneficial interest to cancel such shares of stock or other beneficial interest upon its, his, or their books and in lieu thereof to issue certificates or other instruments for such shares or other beneficial interest to the designee of the President, or otherwise as such designee shall require.

SEC. 204. Any vesting order, or other order or requirement issued pursuant to this title, or a duly certified copy thereof, may be filed, registered, or recorded in any office for the filing, registering, or recording of conveyances, transfers, or assignments of such property as may be covered by such order or requirement; and if so filed, registered, or recorded shall impart the same notice and have the same force and effect as a duly executed conveyance, transfer, or assignment so filed, registered, or recorded.

SEC. 205. Any payment, conveyance, transfer, assignment, or delivery of property made to the President or his designee pursuant to this title, or any rule, regulation, instruction, or direction issued under this title, shall to the extent thereof be a full acquittance and discharge for all purposes of the obligation of the person making the same; and no person shall be held liable in any court for or in respect of any such payment, conveyance, transfer, assignment, or delivery made in good faith in pursuance of and in reliance on the provisions of this title, or of any rule, regulation, instruction, or direction issued thereunder.

SEC. 206. The district courts of the United States are given jurisdiction to make and enter all such rules as to notice and otherwise, and all such orders and decrees, and to issue such process as may be necessary and proper in the premises to enforce the provisions of this title, with a right of appeal from the final order or decree of such court as provided in sections 1252, 1254, 1291, and 1292 of title 28, United States Code.

SEC. 207. (a) Any person who has not filed a notice of claim under subsection (b) of this section may institute a suit in equity for the return of any property, or the net proceeds thereof, vested in a designee of the President pursuant to section 202 (a) and held by such designee. Such suit, to which said designee shall be made a party defendant, shall be instituted in the District Court of the United States for the District of Columbia or in the district court of the United States for the district in which the claimant resides, or, if a

corporation, where it has its principal place of business, by the filing of a complaint which alleges—

(1) that the claimant is a person other than Bulgaria, Hungary, or Rumania, or a national thereof as defined in Executive Order 8389 of April 10, 1940, as amended; and

(2) that the claimant was the owner of such property immediately prior to its vesting, or is the successor in interest of such owner by inheritance, devise, or bequest.

If the court finds in favor of the claimant, it shall order the payment, conveyance, transfer, assignment, or delivery to said claimant of such property, or the net proceeds thereof, held by said designee or the portion thereof to which the court shall determine said claimant is entitled. If suit shall be so instituted, then such property, or, if liquidated, the net proceeds thereof, shall be retained in the custody of said designee until any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied, or until final judgment or decree shall be entered against the claimant or suit otherwise terminated.

(b) Any person who has not instituted a suit under the provisions of subsection (a) of this section may file a notice of claim under oath for the return of any property, or the net proceeds thereof, vested in a designee of the President pursuant to section 202 (a) and held by such designee. Such notice of claim shall be filed with said designee and in such form and containing such particulars as said designee shall require. Said designee may return any property so claimed, or the net proceeds thereof, whenever he shall determine—

(1) that the claimant is a person other than Bulgaria, Hungary, or Rumania, or a national thereof as defined in Executive Order 8389 of April 10, 1940, as amended; and

(2) that the claimant was the owner of such property immediately prior to its vesting, or is the successor in interest of such owner by inheritance, devise, or bequest.

Any person whose claim is finally denied in whole or in part by said designee may obtain review of such denial by filing a petition therefor in the United States Court of Appeals for the District of Columbia Circuit. Such petition for review must be filed within sixty days after the date of mailing of the final order of denial by said designee and a copy must be served on the said designee. Within forty-five days after service of such petition for review, or within such further time as the court may grant for good cause shown, said designee shall file an answer thereto, and shall certify and file with the court a transcript of the entire record of the proceedings with respect to such claim. The court may enter judgment affirming the order of the designee; or upon finding that such order is not in accordance with law or that any material findings upon which such order is based are unsupported by substantial evidence, may enter judgment modifying or setting aside the order in whole or in part, and (1) directing a return of all or part of the property claimed, or (2) remanding the claim for further administrative proceedings thereon. If a notice of claim is filed under this subsection, the property which is the subject of such claim, or, if liquidated, the net proceeds thereof, shall be retained in the custody of said designee until any final order of said designee or any final judgment or decree which shall be entered in favor of the claimant shall be fully satisfied, or until a final order of said designee

or a final judgment or decree shall be entered against the claimant, or the claim or suit otherwise terminated.

(c) The sole relief and remedy of any person having any claim to any property vested pursuant to section 202 (a) shall be that provided by the terms of subsection (a) or (b) of this section, and in the event of the liquidation by sale or otherwise of such property, shall be limited to and enforced against the net proceeds received therefrom and held by the designee of the President. The claim of any person based on his ownership of shares of stock or other proprietary interest in a corporation which was the owner of property at the date of vesting thereof under section 202 (a) shall be allowable under subsection (a) or (b) of this section if 25 per centum or more of the outstanding capital stock or other proprietary interest in the corporation was owned at such date by nationals of countries other than Bulgaria, Hungary, Rumania, Germany, or Japan. But no such claim of a national of a foreign country shall be satisfied except after certification by the Department of State that the country of the national accords protection to nationals of the United States in similar types of cases.

(d) The designee of the President may retain or recover from any property, or the net proceeds thereof, returned pursuant to subsection (a) or (b) of this section an amount not exceeding that expended or incurred by him for the conservation, preservation, or maintenance of such property or proceeds.

SEC. 208. (a) Any property vested in the designee of the President pursuant to section 202 (a), or the net proceeds thereof, shall be equitably applied by such designee in accordance with this section to the payment of debts owed by the person who owned such property immediately prior to its vesting in such designee. No debt claim shall be allowed under this section—

(1) if it is asserted against Bulgaria, Hungary, or Rumania (including the government or any political subdivisions, agencies, or instrumentalities thereof); or

(2) if it is based upon an obligation expressed or payable in any currency other than the currency of the United States; or

(3) if it was not due and owing—

(A) on October 9, 1940, in the event the property in respect of which such debt claim is filed was owned immediately prior to vesting by a national of Rumania;

(B) on March 4, 1941, in the event the property in respect of which such debt claim is filed was owned immediately prior to vesting by a national of Bulgaria; or

(C) on March 13, 1941, in the event that the property in respect of which such debt claim is filed was owned immediately prior to vesting by a national of Hungary.

Any defense to the payment of such claim which would have been available to the debtor shall be available to the designee, except that the period from and after December 7, 1941, shall not be included for the purpose of determining the applicability of any statute of limitations. Debt claims allowable under this section shall include only those of natural persons who were citizens of the United States at the dates their debtors became obligated to them; those of other natural persons who are and have been continuously since Decem-

ber 7, 1941, residents of the United States; those of corporations organized under the laws of the United States or any State, Territory, or possession thereof, or the District of Columbia; and those acquired by the designee of the President under this title. Successors in interest by inheritance, devise, bequest, or operation of law of debt claimants, other than persons who would themselves be disqualified hereunder from allowance of a debt claim, shall be eligible for payment to the same extent as their principals or predecessors would have been.

(b) The designee of the President under this title shall fix a date or dates after which the filing of debt claims in respect of any or all debtors shall be barred, and may extend the time so fixed, and shall give at least sixty days' notice thereof by publication in the Federal Register. In no event shall the time extend beyond the expiration of one year from the date of the last vesting in the designee of the President of any property of a debtor in respect to whose debts the date is fixed. No debt shall be paid prior to the expiration of one hundred and twenty days after publication of the first such notice in respect of the debtor, nor in any event shall any payment of a debt claim be made out of any property or proceeds in respect of which a suit or proceeding for return pursuant to this title is pending.

(c) The designee shall examine the claims, and such evidence in respect thereof as may be presented to him or as he may introduce into the record, and shall make a determination, with respect to each claim, of allowance or disallowance, in whole or in part. The determination of the designee that a claim is within either paragraph (1) or (2) of subsection (a) of this section shall be final and shall not be subject to judicial review, and such claim shall not be considered a debt claim for any purpose under this section.

(d) Payment of debt claims shall be made only out of such money included in, or received as net proceeds from the sale, use, or other disposition of, any property owned by the debtor immediately prior to its vesting in the designee of the President, as shall remain after deduction of (1) the amount of the expenses of the designee (including both expenses in connection with such property or proceeds thereof, and such portion as the designee shall fix of his other expenses), and of taxes, as defined in section 212, paid by the designee in respect of such property or proceeds; and (2) such amount, if any, as the designee may establish as a cash reserve for the future payment of such expenses and taxes. If the money available hereunder for the payment of debt claims against the debtor is insufficient for the satisfaction of all claims allowed by the designee, ratable payments shall be made in accordance with subsection (g) of this section to the extent permitted by the money available and additional payments shall be made whenever the designee shall determine that substantial further money has become available, through liquidation of any such property or otherwise. The designee shall not be required, through any judgment of any court, levy of execution, or otherwise, to sell or liquidate any property vested in him, for the purpose of paying or satisfying any debt claim.

(e) If the aggregate of debt claims filed as prescribed does not exceed the money from which, in accordance with subsection (d) of this section, payment may be made, the designee shall pay each claim to the extent allowed, and shall serve by registered mail, on each claimant whose claim is disallowed in whole or in part, a notice

of such disallowance. Within sixty days after the date of mailing of the designee's determination, any debt claimant whose claim has been disallowed in whole or in part may file in the District Court of the United States for the District of Columbia a complaint for review of such disallowance naming the designee as defendant. Such complaint shall be served on the designee. The designee, within forty-five days after service on him, shall certify and file in said court a transcript of the record of proceedings with respect to the claim in question. Upon good cause shown such time may be extended by the court. Such record shall include the claim as filed, such evidence with respect thereto as may have been presented to the designee or introduced into the record by him, and the determination of the designee with respect thereto, including any findings made by him. The court may, in its discretion, take additional evidence, upon a showing that such evidence was offered to and excluded by the designee, or could not reasonably have been adduced before him or was not available to him. The court shall enter judgment affirming, modifying, or reversing the designee's determination, and directing payment in the amount, if any, which it finds due.

(f) If the aggregate of debt claims filed as prescribed exceeds the money from which, in accordance with subsection (d) of this section, payment may be made, the designee shall prepare and serve by registered mail on all claimants a schedule of all debt claims allowed and the proposed payment to each claimant. In preparing such schedule, the designee shall assign priorities in accordance with subsection (g) of this section. Within sixty days after the date of mailing of such schedule, any claimant considering himself aggrieved may file in the District Court of the United States for the District of Columbia a complaint for review of such schedule, naming the designee as defendant. A copy of such complaint shall be served upon the designee and on each claimant named in the schedule. The designee, within forty-five days after service on him, shall certify and file in said court a transcript of the record of proceedings with respect to such schedule. Upon good cause shown such time may be extended by the court. Such record shall include the claims in question as filed, such evidence with respect thereto as may have been presented to the designee or introduced into the record by him, any findings or other determinations made by the designee with respect thereto, and the schedule prepared by the designee. The court may, in its discretion, take additional evidence, upon a showing that such evidence was offered to and excluded by the designee or could not reasonably have been adduced before him or was not available to him. Any interested debt claimant who has filed a claim with the designee pursuant to this section, upon timely application to the court, shall be permitted to intervene in such review proceedings. The court shall enter judgment affirming or modifying the schedule as prepared by the designee and directing payment, if any be found due, pursuant to the schedule as affirmed or modified and to the extent of the money from which, in accordance with subsection (d) of this section, payment may be made. Pending the decision of the court on such complaint for review, and pending final determination of any appeal from such decision, payment may be made only to an extent, if any, consistent with the contentions of all claimants for review.

(g) Debt claims shall be paid in the following order of priority: (1) Wage and salary claims, not to exceed $600; (2) claims entitled to priority under sections 3466 and 3468 of the Revised Statutes (31 U. S. C., secs. 191 and 193), except as provided in subsection (h) of this section; (3) all other claims for services rendered; for expenses incurred in connection with such services, for rent, for goods and materials delivered to the debtor, and for payments made to the debtor for goods or services not received by the claimant; (4) all other debt claims. No payment shall be made to claimants within a subordinate class unless the money from which, in accordance with subsection (d) of this section, payment may be made permits payment in full of all allowed claims in every prior class.

(h) No debt of any kind shall be entitled to priority under any law of the United States or any State, Territory, or possession thereof, or the District of Columbia, solely by reason of becoming a debt due or owing to the United States as a result of its acquisition by the designee of the President under this title.

(i) The sole relief and remedy available to any person seeking satisfaction of a debt claim out of any property vested in the designee under section 202 (a), or the proceeds thereof, shall be the relief and remedy provided in this section, and suits for the satisfaction of debt claims shall not be instituted, prosecuted, or further maintained except in conformity with this section. No person asserting any interest, right, or title in any property or proceeds acquired by the designee shall be barred from proceeding pursuant to this title for the return thereof, by reason of any proceeding which he may have brought pursuant to this section; nor shall any security interest asserted by the creditor in any such property or proceeds be deemed to have been waived solely by reason of such proceeding. Nothing contained in this section shall bar any person from the prosecution of any suit at law or in equity against the original debtor or against any other person who may be liable for the payment of any debt for which a claim might have been filed hereunder. No purchaser, lessee, licensee, or other transferee of any property from the designee shall, solely by reason of such purchase, lease, license, or transfer, become liable for the payment of any debt owed by the person who owned such property prior to its vesting in the designee. Payment by the designee to any debt claimant shall constitute, to the extent of payment, a discharge of the indebtedness represented by the claim.

SEC. 209. The officer or agency designated by the President under this title to entertain claims under section 207 (b) and section 208 shall have power to hold such hearings as may be deemed necessary; to prescribe rules and regulations governing the form and contents of claims, the proof thereof, and all other matters related to proceedings on such claims; and in connection with such proceedings to issue subpenas, administer oaths, and examine witnesses. Such powers, and any other powers conferred upon such officer or agency by section 207 (b) and section 208 may be exercised through subordinate officers designated by such officer or agency.

SEC. 210. No suit may be instituted pursuant to section 207 (a) after the expiration of one year from the date of vesting of the property in respect of which relief is sought. No return may be made pursuant to section 207 (b) unless notice of claim has been filed within one year from the date of vesting of the property in respect of which the claim is filed:

SEC. 211. No property or proceeds shall be returned under this title, nor shall any payment be made or judgment awarded in respect of any property vested in any officer or agency designated by the President under this title unless satisfactory evidence is furnished to said designee, or the court, as the case may be, that the aggregate of the fees to be paid to all agents, attorneys at law or in fact, or representatives, for services rendered in connection with such return or payment or judgment does not exceed 10 per centum of the value of such property or proceeds or of such payment. Any agent, attorney at law or in fact, or representative, believing that the aggregate of the fees should be in excess of such 10 per centum may, in the case of any return of, or the making of any payment in respect of, such property or proceeds by the President or such officer or agency as he may designate, petition the district court of the United States for the district in which he resides for an order authorizing fees in excess of 10 per centum and shall name such officer or agency as respondent. The court hearing such petition or a court awarding any judgment in respect of any such property or proceeds, as the case may be, shall approve an aggregate of fees in excess of 10 per centum of the value of such property or proceeds only upon a finding that there exist special circumstances of unusual hardship which require the payment of such excess. Any person accepting any fee in excess of an amount approved under this section, or retaining for more than thirty days any portion of a fee, accepted prior to such approval, in excess of the fee as approved, shall be guilty of a violation of this title.

SEC. 212. (a) The vesting in any officer or agency designated by the President under this title of any property or the receipt by such designee of any earnings, increment, or proceeds thereof shall not render inapplicable any Federal, State, Territorial, or local tax for any period before or after such vesting.

(b) The officer or agency designated by the President under this title shall, notwithstanding the filing of any claim or the institution of any suit under this title, pay any tax incident to any such property, or the earnings, increment, or proceeds thereof, at the earliest time appearing to him to be not contrary to the interest of the United States. The former owner shall not be liable for any such tax accruing while such property, earnings, increment, or proceeds are held by such designee, unless they are returned pursuant to this title without payment of such tax by the designee. Every such tax shall be paid by the designee to the same extent, as nearly as may be deemed practicable, as though the property had not been vested, and shall be paid only out of the property, or earnings, increment, or proceeds thereof, to which they are incident or out of other property acquired from the same former owner, or earnings, increment, or proceeds thereof. No tax liability may be enforced from any property or the earnings, increment, or proceeds thereof while held by the designee except with his consent. Where any property is transferred, otherwise than pursuant to section 207 (a) or 207 (b) hereof, the designee may transfer the property free and clear of any tax, except to the extent of any lien for a tax existing and perfected at the date of vesting, and the proceeds of such transfer shall, for tax purposes, replace the property in the hands of the designee.

(c) Subject to the provisions of subsection (b) of this section, the manner of computing any Federal taxes, including without limitation

by reason of this enumeration, the applicability in such computation of credits, deductions, and exemptions to which the former owner is or would be entitled, and the time and manner of any payment of such taxes and the extent of any compliance by the designee with provisions of Federal law and regulations applicable with respect to Federal taxes, shall be in accordance with regulations prescribed by the Secretary of the Treasury to effectuate this section. Statutes of limitations on assessments, collection, refund, or credit of Federal taxes shall be suspended with respect to any vested property or the earnings, increment, or proceeds thereof, while vested and for six months thereafter; but no interest shall be paid upon any refund with respect to any period during which the statute of limitations is so suspended.

(d) The word "tax" as used in this section shall include, without limitation by reason of this enumeration, any property, income, excess-profits, war-profits, excise, estate, and employment tax, import duty, and special assessment; and also any interest, penalty, additional amount, or addition thereto not arising from any act, omission, neglect, failure, or delay on the part of the designee.

SEC. 213. Prior to covering the net proceeds of liquidation of any property into the Treasury pursuant to section 202 (a), the designee of the President under this title shall determine—

(1) the amount of his administrative expenses attributable to the performance of his functions under this title with respect to such property and the proceeds thereof. The amounts so determined, together with an amount not exceeding that expended or incurred for the conservation, preservation, or maintenance of such property and the proceeds thereof, and for taxes in respect of same, shall be deducted and retained by the designee from the proceeds otherwise covered into the Treasury; and

(2) that the time for the institution of a suit under section 207 (a), for the filing of a notice of claim under section 207 (b), and for the filing of debt claims under section 208 has elapsed.

The determinations of the designee under this section shall be final and conclusive.

SEC. 214. No property conveyed, transferred, assigned, delivered, or paid to the designee of the President under this title, or the net proceeds thereof, shall be liable to lien, attachment, garnishment, trustee process, or execution, or subject to any order or decree of any court, except as provided in this title.

SEC. 215. Whoever shall willfully violate any provision of this title or any rule or regulation issued hereunder, and whoever shall willfully violate, neglect, or refuse to comply with any order of the President or of a designee of the President under this title, issued in compliance with the provisions of this title shall be fined not more than $5,000, or, if a natural person, imprisoned for not more than five years, or both; and the officer, director, or agent of any corporation who knowingly participates in such violation shall be punished by a like fine, imprisonment, or both.

TITLE III [8]

CLAIMS AGAINST BULGARIA, HUNGARY, RUMANIA, ITALY, AND THE SOVIET UNION

SEC. 301. As used in this title the term—

(1) "Person" means a natural person, partnership, association, other unincorporated body, corporation, or body politic.

(2) "National of the United States" means (A) a natural person who is a citizen of the United States, or who owes permanent allegiance to the United States, and (B) a corporation or other legal entity which is organized under the laws of the United States, any State or Territory thereof, or the District of Columbia, if natural persons who are nationals of the United States own, directly or indirectly, more than 50 per centum of the outstanding capital stock or other beneficial interest in such legal entity. It does not include aliens.

(3) "Treaty of peace", with respect to a country, means the treaty of peace with that country signed at Paris, France, February 10, 1947, which came into force between that country and the United States on September 15, 1947.

(4) "Memorandum of Understanding" means the Memorandum of Understanding between the United States and Italy regarding Italian assets in the United States and certain claims of nationals of the United States, signed at Washington, District of Columbia, August 14, 1947 (61 Stat. 3962).

(5) "Soviet Government" means the Union of Soviet Socialist Republics, including any of its present or former constituent republics, other political subdivisions, and any territories thereof, as constituted on or prior to November 16, 1933.

(6) "Litvinov Assignment" means (A) the communication dated November 16, 1933, from Maxim Litvinov to President Franklin D. Roosevelt, wherein the Soviet Government assigned to the Government of the United States amounts admitted or found to be due it as the successor of prior governments of Russia, or otherwise, preparatory to a final settlement of the claims outstanding between the two Governments and the claims of their nationals; (B) the communication dated November 16, 1933, from President Franklin D. Roosevelt to Maxim Litvinov, accepting such assignment; and (C) the assignments executed by Serge Ughet on August 25, 1933, and November 15, 1933, assigning certain assets to the Government of the United States.

(7) "Russian national" includes any corporation or business association organized under the laws, decrees, ordinances, or acts of the former Empire of Russia or of any government successor thereto, and subsequently nationalized or dissolved or whose assets were taken over by the Soviet Government or which was merged with any other corporation or organization by the Soviet Government.

(8) "Commission" means the Foreign Claims Settlement Commission of the United States, established pursuant to Reorganization Plan Numbered 1 of 1954 (68 Stat. 1279).

(9) "Property" means any property, right, or interest.

SEC. 302. There are hereby created in the Treasury of the United States five funds to be known as the Bulgarian Claims Fund, the Hun-

[8] Title III added by Public Law 285, 84th Cong., approved August 9, 1955 (69 Stat. 570).

garian Claims Fund, the Rumanian Claims Fund, the Italian Claims Fund, and the Soviet Claims Fund. The Secretary of the Treasury shall cover into each of the Hungarian, Rumanian, and Bulgarian Claims Funds, the funds attributable to the respective country or its nationals covered into the Treasury pursuant to subsections (a) and (b) of section 202 of this Act. The Secretary of the Treasury shall cover into the Italian Claims Fund the sum of $5,000,000 paid to the United States by the Government of Italy pursuant to article II of the Memorandum of Understanding. The Secretary shall cover into the Treasury the funds collected by the United States pursuant to the Litinov Assignment (including postal funds due prior to November 16, 1933, to the Union of Soviet Socialist Republics because of money orders certified to that country for payment) and shall cover into the Soviet Claims Fund the funds so covered into the Treasury. The Secretary shall deduct from each claims fund 5 per centum thereof as reimbursement to the Government of the United States for the expenses incurred by the Commission and by the Treasury Department in the administration of this title. Such deduction shall be made before any payment is made out of such fund under section 310. All amounts so deducted shall be covered into the Treasury to the credit of miscellaneous receipts.

SEC. 303. The Commission shall received and determine in accordance with applicable substantive law, including international law, the validity and amounts of claims of nationals of the United States against the Governments of Bulgaria, Hungary, and Rumania, or any of them, arising out of the failure to—

(1) restore or pay compensation for property of nationals of the United States as required by article 23 of the treaty of peace with Bulgaria, articles 26 and 27 of the treaty of peace with Hungary, and articles 24 and 25 of the treaty of peace with Rumania. Awards under this paragraph shall be in amounts not to exceed two-thirds of the loss or damage actually sustained;

(2) pay effective compensation for the nationalization, compulsory liquidation, or other taking, prior to the effective date of this title, of property of nationals of the United States in Bulgaria, Hungary, and Rumania; and

(3) meet obligations expressed in currency of the United States arising out of contractual or other rights acquired by nationals of the United States prior to April 24, 1941, in the case of Bulgaria, and prior to September 1, 1939, in the case of Hungary and Rumania, and which became payable prior to September 15, 1947.

SEC. 304. The Commission shall receive and determine, in accordance with the Memorandum of Understanding and applicable substantive law, including international law, the validity and amount of claims of nationals of the United States against the government of Italy arising out of the war in which Italy was engaged from June 10, 1940, to September 15, 1947, and with respect to which provision was not made in the treaty of peace with Italy.

SEC. 305. (a) The Commission shall receive and determine in accordance with applicable substantive law, including international law, the validity and amounts of—

(1) claims of nationals of the United States against a Russian national originally accruing in favor of a national of the United States with respect to which a judgment was entered in, or a warrant of attachment issued from, any court of the United States or of a State of the United States in favor of a national of the United States, with which judgment or warrant of attachment a lien was obtained by a national of the United States, prior to November 16, 1933, upon any property in the United States which has been taken, collected, recovered, or liquidated by the Government of the United States pursuant to the Litvinov Assignment. Awards under this paragraph shall not exceed the proceeds of such property as may have been subject to the lien of the judgment or attachment; nor, in the event that such proceeds are less than the aggregate amount of all valid claims so related to the same property, exceed an amount equal to the proportion which each such claim bears to the total amount of such proceeds; and

(2) claims, arising prior to November 16, 1933, of nationals of the United States against the Soviet Government.

(b) Any judgment entered in any court of the United States or of a State of the United States shall be binding upon the Commission in its determination, under paragraph (1) of subsection (a) of this section, of any issue which was determined by the court in which the judgment was entered.

(c) The Commission shall give preference to the disposition of the claims referred to in paragraph (1) of subsection (a) of this section, over all other claims presented to it under this title.

SEC. 306. Within sixty days after the date of enactment of this title, or within sixty days after the date of enactment of legislation making appropriations to the Commission for payment of administrative expenses incurred in carrying out its functions under this title, whichever date is later, the Commission shall publish in the Federal Register the time when and the limit of time within which claims may be filed under this title, which limit shall not be more than one year after such publication, except that with respect to claims under section 305 this limit shall not exceed six months.

SEC. 307. The amount of any award made pursuant to this title based on a claim of a national of the United States other than the national of the United States to whom the claim originally accrued shall not exceed the amount of the actual consideration last paid therefor either prior to January 1, 1953, or between that date and the filing of the claim, whichever is less.

SEC. 308. The Commission shall as soon as possible, and in the order of the making of such awards, certify to the Secretary of the Treasury, in terms of United States currency, each award made pursuant to this title.

SEC. 309. All payments authorized under this title shall be disbursed exclusively from the claims fund attributable to the country with respect to which the claims are allowed pursuant to this title. All amounts covered into the Treasury to the credit of the claims funds created by section 302 are hereby permanently appropriated for the making of the payments authorized under this title.

SEC. 310. (a) The Secretary of the Treasury shall make payments on account of awards certified by the Commission pursuant to this title as follows:

(1) Payment in full of the principal amount of each award made pursuant to section 305 (a) (1) and each award of $1,000 or less made pursuant to section 303 or 304;

(2) Payment in full of the principal amount of each award of $1,000 or less made pursuant to section 305 (a) (2);

(3) Payment in the amount of $1,000 on account of the principal of each award of more than $1,000 in amount made pursuant to section 303, 304, or 305 (a) (2);

(4) After completing the payments under the preceding paragraphs of this subsection from any one fund, payments from time to time, in ratable proportions, on account of the then unpaid principal of all awards in the principal amount of more than $1,000, according to the proportions which the unpaid principal of such awards bear to the total amount in the fund available for distribution on account of such awards at the time such payments are made;

(5) After payment has been made in full of the principal amounts of all awards from any one fund, pro rata payments from the remainder of such fund then available for distribution on account of accrued interest on such awards as bear interest.

(b) Such payments, and applications for such payments, shall be made in accordance with such regulations as the Secretary of the Treasury shall prescribe.

(c) For the purposes of making any such payments, an "award" shall be deemed to mean the aggregate of all awards certified in favor of the same claimant and payable from the same fund.

(d) With respect to any claim which, at the time of the award, is vested in persons other than the person to whom the claim originally accrued, the Commission may issue a consolidated award in favor of all claimants then entitled thereto, which award shall indicate the respective interests of such claimants therein; and all such claimants shall participate, in proportion to their indicated interests, in the payments provided by this section in all respects as if the award had been in favor of a single person.

SEC. 311. (a) If a corporation or other legal entity has a claim on which an award may be made under this title, no award may be made to any other person under this title with respect to such claim.

(b) A claim based upon an interest, direct or indirect, in a corporation or other legal entity which directly suffered the loss with respect to which the claim is asserted, but which was not a national of the United States at the time of the loss, shall be acted upon without regard to the nationality of such legal entity if at the time of the loss at least 25 per centum of the outstanding capital stock or other beneficial interest in such entity was owned, directly or indirectly, by natural persons who were nationals of the United States.

SEC. 312. No award shall be made under this title to or for the benefit of any person who voluntarily, knowingly, and without duress, gave aid to or collaborated with or in any manner served any government hostile to the United States during World War II, or who has been convicted of a violation of any provision of chapter 115, of title 18, of the United States Code, or of any other crime involving disloyalty to the United States.

SEC. 313. Payment of any award made pursuant to section 303 or 305 shall not, unless such payment is for the full amount of the claim, as determined by the Commission to be valid, with respect to which the award is made, extinguish such claim, or be construed to have divested any claimant, or the United States on his behalf, of any rights against the appropriate foreign government or national for the unpaid balance of his claim or for restitution of his property. All awards or payments made pursuant to this title shall be without prejudice to the claims of the United States against any foreign government.

SEC. 314. The action of the Commission in allowing or denying any claim under this title shall be final and conclusive on all questions of law and fact and not subject to review by any other official of the United States or by any court by mandamus or otherwise, and the Comptroller General shall allow credit in the accounts of any certifying or disbursing officer for payments in accordance with such action.

SEC. 315. There are hereby authorized to be appropriated such sums as may be necessary to enable the Commission and the Treasury Department to pay their administrative expenses incurred in carrying out their functions under this title.

SEC. 316. The Commission shall complete its affairs in connection with the settlement of claims pursuant to section 305 (a) (1) not later than two years, and all other claims pursuant to this title not later than four years, following the date of enactment of this title, or following the date of enactment of legislation making appropriations to the Commission for the payment of administrative expenses incurred in carrying out its functions under this title, whichever date is later.

SEC. 317. (a) The total remuneration paid to all agents, attorneys-at-law or in fact, or representatives, for services rendered on behalf of any claimant in connection with any claim filed with the Commission shall not exceed 10 per centum of the total amount paid under this title on account of such claim, or such greater amount as may be determined pursuant to subsection (b) of this section. Any agreement to the contrary shall be unlawful and void. Whoever, in the United States or elsewhere, demands or receives, on account of services so rendered, any remuneration which, together with all remuneration paid to other persons on account of such services and of which he has notice, is in excess of the maximum permitted by this section, shall be fined not more than $5,000 or imprisoned not more than twelve months, or both.

(b) Not later than three months after the Commission has completed its affairs in connection with the settlement of all claims payable from the fund from which an award is payable, any agent, attorney-at-law or in fact, or representative who believes that the total remuneration for services rendered in connection with the claim upon which such award is made should exceed the maximum otherwise permitted by this section may, pursuant to such procedure as the Commission shall prescribe by regulation, petition the Commission for an order authorizing the payment of remuneration in excess of such maximum. The Commission shall issue such an order only upon a finding that there exist special circumstances of unusual hardship which require the payment of such excess; and such order shall state the amount of the excess which may so be paid. The

determination of the Commission in ruling upon such petition shall be within the sole discretion of the Commission and shall not be subject to review by any court.

SEC. 318. The following provisions of title I shall be applicable to this title: Subsections (b) (c), (d), (e), (h), and (j) of section 4; and subsections (c), (d), (e), and (f) of section 7.

Approved March 10, 1950.

APPENDIX

Containing certain other statutes relating to enemy property or war claims, certain relevant Executive orders, extracts from reorganization plans, treaties, and international agreements.*

*It has not been practicable to include all materials of this nature.

APPENDIX

[EXTRACT FROM PUBLIC NO. 181, 65TH CONGRESS]

[40 Stat. L. 646]

* * * * * * * * *

All taxes heretofore or hereafter lawfully assessed by any body politic against money or other property held by the alien property custodian shall be paid out of such money or other property, and if that be insufficient, shall be charged thereto and paid out of any other moneys or properties required from the same enemy or ally of enemy.[1]

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Approved, July 1, 1918.

[PUBLIC RESOLUTION NO. 64—66TH CONGRESS]

[41 Stat. L. 1359]

JOINT RESOLUTION Declaring that certain Acts of Congress, joint resolutions, and proclamations shall be construed as if the war had ended and the present or existing emergency expired.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That in the interpretation of any provision relating to the duration or date of the termination of the present war or of the present or existing emergency, meaning thereby the war between the Imperial German Government and the Imperial and Royal Austro-Hungarian Government and the Government and people of the United States, in any Acts of Congress, joint resolutions, or proclamations of the President containing provisions contingent upon the duration or the date of the termination of such war or of such present or existing emergency, the date when this resolution becomes effective shall be construed and treated as the date of the termination of the war or of the present or existing emergency, notwithstanding any provision in any Act of Congress or joint resolution providing any other mode of determining the date of such termination. And any Act of Congress, or any provision of any such Act, that by its terms is in force only during the existence of a state of war, or during such state of war and a limited period of time thereafter, shall be construed and administered as if such war between the Governments and people aforesaid terminated on the date when this resolution becomes effective, any provision of such law to the contrary notwithstanding; excepting, however, from the operation and effect of this resolution the following Acts and proclamations, to wit: Title 2 of the Act entitled "The

[1] See first two sentences of section 24 (a) of the Trading With the Enemy Act.

Food Control and District of Columbia Rents Act," approved October 22, 1919 (Forty-first Statutes, page 297), the Act known as the Trading with the Enemy Act, approved October 6, 1917 (Fortieth Statutes, page 411), and all amendments thereto, and the First, Second, Third, and Fourth Liberty Bond Acts, the Supplement to the Second Liberty Bond Act, and the Victory Liberty Loan Act; titles 1 and 3 of the War Finance Corporation Act (Fortieth Statutes, page 506) as amended by the Act approved March 3, 1919 (Fortieth Statutes, page 1313), and Public Resolution Numbered 55, Sixty-sixth Congress, entitled "Joint resolution directing the War Finance Corporation to take certain action for the relief of the present depression in the agricultural sections of the country, and for other purposes," passed January 4, 1921; also the proclamations issued under the authority conferred by the Acts herein excepted from the effect and operation of this resolution: *Provided, however*, That nothing herein contained shall be construed as effective to terminate the military status of any person now in desertion from the military or naval service of the United States, nor to terminate the liability to prosecution and punishment under the selective service law, approved May 18, 1917 (Fortieth Statutes, page 76), of any person who failed to comply with the provisions of said Act, or of Acts amendatory thereof: *Provided further*, That the Act, entitled "An Act to amend section 3, title 1, of the Act entitled 'An Act to punish acts of interference with foreign relations, the neutrality, and the foreign commerce of the United States, to punish espionage, and better to enforce the criminal laws of the United States, and for other purposes,' approved June 15, 1917 (Fortieth Statutes, page 217), and for other purposes," approved May 16, 1918 (Fortieth Statutes, page 553), be, and the same is hereby repealed, and that said section 3 of said Act approved June 15, 1917, is hereby revived and restored with the same force and effect as originally enacted.

Nothing herein contained shall be held to exempt from prosecution or to relieve from punishment any offense heretofore committed in violation of any Act hereby repealed or which may be committed while it remains in force as herein provided.

Approved, March 3, 1921.

[PUBLIC RESOLUTION NO. 8—67TH CONGRESS]

[42 Stat. L. 105]

JOINT RESOLUTION Terminating the state of war between the Imperial German Government and the United States of America and between the Imperial and Royal Austro-Hungarian Government and the United States of America.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the state of war declared to exist between the Imperial German Government and the United States of America by the joint resolution of Congress approved April 6, 1917, is hereby declared at an end.

SEC. 2. That in making this declaration, and as a part of it, there are expressly reserved to the United States of America and its nationals any and all rights, privileges, indemnities, reparations, or ad-

vantages, together with the right to enforce the same, to which it or they have become entitled under the terms of the armistice signed November 11, 1918, or any extensions or modifications thereof; or which were acquired by or are in the possession of the United States of America by reason of its participation in the war or to which its nationals have thereby become rightfully entitled; or which, under the treaty of Versailles, have been stipulated for its or their benefit; or to which it is entitled as one of the principal allied and associated powers; or to which it is entitled by virtue of any Act or Acts of Congress; or otherwise.

SEC. 3. That the state of war declared to exist between the Imperial and Royal Austro-Hungarian Government and the United States of America by the joint resolution of Congress approved December 7, 1917, is hereby declared at an end.

SEC. 4. That in making this declaration, and as a part of it, there are expressly reserved to the United States of America and its nationals any and all rights, privileges, indemnities, reparations, or advantages, together with the right to enforce the same, to which it or they have become entitled under the terms of the armistice signed November 3, 1918, or any extensions or modifications thereof; or which were acquired by or are in the possession of the United States of America by reason of its participation in the war or to which its nationals have thereby become rightfully entitled; or which, under the treaty of Saint Germain-en-Laye or the treaty of Trianon, have been stipulated for its or their benefit; or to which it is entitled as one of the principal allied and associated powers; or to which it is entitled by virtue of any Act or Acts of Congress; or otherwise.

SEC. 5. All property of the Imperial German Government, or its successor or successors, and of all German nationals which was, on April 6, 1917, in or has since that date come into the possession or under control of, or has been the subject of a demand by the United States of America or of any of its officers, agents, or employees, from any source or by any agency whatsoever, and all property of the Imperial and Royal Austro-Hungarian Government, or its successor or successors, and of all Austro-Hungarian nationals which was on December 7, 1917, in or has since that date come into the possession or under control of, or has been the subject of a demand by the United States of America or any of its officers, agents, or employees from any source or by any agency whatsoever, shall be retained by the United States of America and no disposition thereof made, except as shall have been heretofore or specifically hereafter shall be provided by law until such time as the Imperial German Government and the Imperial and Royal Austro-Hungarian Government, or their successor or successors, shall have respectfully made suitable provision for the satisfaction of all claims against said Governments, respectively, of all persons, wheresoever domiciled, who owe permanent allegiance to the United States of America and who have suffered, through the acts of the Imperial German Government, or its agents, or the Imperial and Royal Austro-Hungarian Government, or its agents, since July 31, 1914, loss, damage, or injury to their persons or property, directly or indirectly, whether through the ownership of shares of stock in German, Austro-Hungarian, American, or other corporations, or in consequence of hostilities or of any operations of war, or otherwise, and

also shall have granted to persons owing permanent allegiance to the United States of America most-favored-nation treatment, whether the same be national or otherwise, in all matters affecting residence, business, profession, trade, navigation, commerce and industrial property rights, and until the Imperial German Government and the Imperial and Royal Austro-Hungarian Government, or their successor or successors, shall have respectively confirmed to the United States of America all fines, forfeitures, penalties, and seizures imposed or made by the United States of America during the war, whether in respect to the property of the Imperial German Government or German nationals or the Imperial and Royal Austro-Hungarian Government or Austro-Hungarian nationals, and shall have waived any and all pecuniary claims against the United States of America.

SEC. 6. Nothing herein contained shall be construed to repeal, modify or amend the provisions of the joint resolution "declaring that certain Acts of Congress, joint resolutions and proclamations shall be construed as if the war had ended and the present or existing emergency expired," approved March 3, 1921, or the passport control provisions of an Act entitled "An act making appropriations for the diplomatic and consular service for the fiscal year ending June 30, 1922," approved March 2, 1921; nor to be effective to terminate the military status of any person now in desertion from the military or naval service of the United States, nor to terminate the liability to prosecution and punishment under the Selective Service law, approved May 18, 1917, of any person who failed to comply with the provisions of said Act, or of Acts amendatory thereof.

Approved, July 2, 1921.

[PUBLIC RESOLUTION—NO. 77—71ST CONGRESS]

[46 Stat. 488]

JOINT RESOLUTION Authorizing the immediate appropriations of certain amounts authorized to be appropriated by the Settlement of War Claims Act of 1928.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the sums authorized by subsection (p) of section 3 of the Settlement of War Claims Act of 1928 to be appropriated after the date on which the awards of the war claims arbiter under section 3 of such Act are certified to the Secretary of the Treasury, are hereby authorized to be appropriated at any time, but shall not be available until after such date.

Approved, May 29, 1930.

[EXTRACT FROM PUBLIC RESOLUTION NO. 53, 73D CONGRESS]

[48 Stat. 1267]

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That so long as Germany is in arrears in any payments of principal or interest, including interest at the rate of 5 per centum per annum on principal installments not paid when due, under the debt-funding agreement between Germany and the United States, dated June 23, 1930, with respect to Germany's

obligations remaining on account of awards, including interest thereon, entered and to be entered by the Mixed Claims Commission, United States and Germany, all payments, conveyances, transfers, or deliveries of money or property or the income, issues, profits, and/or avails thereof authorized or directed to be made under the Trading with the Enemy Act, as amended, or the Settlement of War Claims Act of 1928, as amended, whether or not a judgment or decree has been entered with respect thereto, shall be postponed and the money or property, or the income, issues, profits, and/or avails thereof reserved: *Provided, however*, That such of the funds as are from time to time available (without taking into consideration interest thereafter accruing) under the Settlement of War Claims Act of 1928, as amended, for the payment of principal and interest upon awards of said Mixed Claims Commission shall be applied when available to the payment of principal and interest upon such awards in the same manner and to the same extent as though certain of the payments provided for in said Act had not been postponed under this resolution: *Provided further*, That the President may, in his sole discretion, remove the restriction as to any of the cases or classes of cases in relation to which payments, conveyances, transfers, or deliveries have been postponed under this resolution: *And provided further*, That the President is authorized to determine, for the purposes of this resolution, the period or periods in which Germany is in arrears in the payments hereinbefore described, and his determination thereof shall not be subject to judicial review.

* * * * * * *

Approved June 27, 1934.

[PUBLIC RESOLUTION—NO. 69—76TH CONGRESS]

[54 Stat. 179]

JOINT RESOLUTION To amend section 5 (b) of the Act of October 6, 1917, as amended, and for other purposes.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the first sentence of subdivision (b) of section 5 of the Act of October 6, 1917 (40 Stat. 411), as amended, is hereby amended to read as follows:

"During time of war or during any other period of national emergency declared by the President, the President may, through any agency that he may designate, or otherwise, investigate, regulate, or prohibit, under such rules and regulations as he may prescribe, by means of licenses or otherwise, any transactions in foreign exchange, transfers of credit between or payments by or to banking institutions as defined by the President, and export, hoarding, melting, or earmarking of gold or silver coin or bullion or currency, and any transfer, withdrawal or exportation of, or dealing in, any evidences of indebtedness or evidences of ownership of property in which any foreign state or a national or political subdivision thereof, as defined by the President, has any interest, by any person within the United States or any place subject to the jurisdiction thereof; and the President may require any person to furnish under oath, complete information relative to any transaction referred to in this subdivision or to any property in which

any such foreign state, national or political subdivision has any interest, including the production of any books of account, contracts, letters, or other papers, in connection therewith in the custody or control of such person, either before or after such transaction is completed."

SEC. 2. Executive Order Numbered 8389 [2] of April 10, 1940, and the regulations and general rulings issued thereunder by the Secretary of the Treasury are hereby approved and confirmed.

SEC. 3. Nothing in this Joint Resolution shall be deemed to repeal or to modify in any manner any of the provisions of the Act of April 13, 1934, 48 Stat. 574 (the Johnson Act) or of the Neutrality Act of 1939 (Public Resolution Numbered 54, Seventy-sixth Congress).

Approved, May 7, 1940.

[EXTRACT FROM FIRST WAR POWERS ACT, 1941, PUBLIC LAW 354, 77TH CONGRESS]

[55 Stat. 840]

* * * * * * *

SEC. 302. All acts, actions, regulations, rules, orders, and proclamations heretofore taken, promulgated, made, or issued by, or pursuant to the direction of, the President or the Secretary of the Treasury under the Trading With the Enemy Act of October 6, 1917 (40 Stat. 411), as amended, which would have been authorized if the provisions of this Act and the amendments made by it had been in effect, are hereby approved, ratified, and confirmed.

* * * * * * *

Approved December 18, 1941.

[EXTRACT FROM PUBLIC LAW 529, 78TH CONGRESS]

[58 Stat. 855]

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Provided further, That after June 30, 1945, the Office of Alien Property Custodian shall not incur any obligations for the expenses of said Office except pursuant to a further annual authorization by the Congress specifically therefor:

* * * * * * *

Approved December 22, 1944.

[PHILIPPINE PROPERTY ACT OF 1946, PUBLIC LAW 485—79TH CONGRESS]

[60 Stat. 418]

AN ACT To provide for the retention by the United States Government or its agencies or instrumentalities of real and personal property within the Philippines now owned or later acquired and for the administration of the Trading With the Enemy Act of October 6, 1917, as amended, in the Philippines, subsequent to independence.

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[2] The text of this order is printed at page 131 of this booklet.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SHORT TITLE

SECTION 1. This Act may be cited as the "Philippine Property Act of 1946".

SEC. 2. There shall remain vested in the Government of the United States or its agencies or instrumentalities all the right, title, and interest of the said Government or its agencies or instrumentalities to all real and personal property within the Philippine Islands as may now be vested in, or later be acquired by the Government of the United States or any of its agencies or instrumentalities.

SEC. 3. The Trading With the Enemy Act of October 6, 1917 (40 Stat. 411), as amended, shall continue in force in the Philippines after July 4, 1946, and all powers and authority conferred upon the President of the United States or the Alien Property Custodian by the terms of the said Trading With the Enemy Act, as amended, with respect to the Philippines, shall continue thereafter to be exercised by the President of the United States, or such officer or agency as he may designate: *Provided*, That all property vested in or transferred to the President of the United States, the Alien Property Custodian, or any such officer or agency as the President of the United States may designate under the Trading With the Enemy Act, as amended, which was located in the Philippines at the time of such vesting, or the proceeds thereof, and which shall remain after the satisfaction of any claim payable under the Trading With the Enemy Act, as amended, and after the payment of such costs and expenses of administration as may by law be charged against such property or proceeds, shall be transferred by the President of the United States to the Republic of the Philippines: *Provided further*, That such property, or proceeds thereof, may be transferred by the President of the United States to the Republic of the Philippines upon indemnification acceptable to the President of the United States by the Republic of the Philippines for such claims, costs, and expenses of administration as may by law be charged against such property or proceeds thereof before final adjudication of such claims, costs, and expenses of administration: *Provided further*, That the courts of first instance of the Republic of the Philippines are hereby given jurisdiction to make and enter all such rules as to notice or otherwise, and all such orders and decrees, and to issue such process as may be necessary and proper in the premises to enforce any orders, rules, and regulations issued by the President of the United States, the Alien Property Custodian, or such officer or agency designated by the President of the United States pursuant to the Trading With the Enemy Act, as amended, with such right of appeal therefrom as may be provided by law: *And provided further*, That any suit authorized under the Trading With the Enemy Act, as amended, with respect to property vested in or transferred to the President of the United States, the Alien Property Custodian, or any officer or agency designated by the President of the United States hereunder, which at the time of such vesting or transfer was located within the

Philippines, shall after July 4, 1946, be brought, in the appropriate court of first instance of the Republic of the Philippines, against the officer or agency hereunder designated by the President of the United States with such right of appeal therefrom as may be provided by law. In any litigation authorized under this section, the officer or administrative head of the agency designated hereunder may appear personally, or through attorneys appointed by him, without regard to the requirements of law other than this section.[3]

SEC. 4. In respect to property not transferable to the Republic of the Philippines under section 3 of this Act, the President of the United States is authorized, in his discretion and under such terms and conditions as he may deem appropriate, to transfer to the Republic of the Philippines any or all of the right, title, and interest of the Government of the United States or its agencies or instrumentalities to any or all real and personal property vested in such agencies or instrumentalities.

SEC. 5. Immediately upon passage of this Act the Alien Property Custodian of the United States shall enter into an agreement with the President of the Philippines to transfer to the Philippine Government for a nominal cash consideration all shares now vested or hereafter vested by the Alien Property Custodian of corporations owning in fee, leasing, or otherwise operating or controlling agricultural lands in the Philippines, other agricultural lands in the Philippines, vested or hereafter vested by the Alien Property Custodian not included in the foregoing, and improved property in Manila vested or hereafter vested by the Alien Property Custodian which in his judgment is urgently needed for the operation of an administrative agency of the Philippine Government: *Provided*, That in respect to property transferred under this section to the Philippine Government, it shall be made a part of the agreement that the Philippine Government shall fully indemnify the United States for all claims payable under the Trading With the Enemy Act, as amended, and for all such costs and expenses of administration as may by law be charged against such property or proceeds thereof.

SEC. 6. Nothing contained in this Act shall be construed as amending the provisions of the Act of March 24, 1934 (48 Stat. 456), as amended, respecting naval reservations and fueling stations, and diplomatic or consular property, and the property of the High Commissioner to the Philippine Islands, nor as amending the provisions of the joint resolution of June 29, 1944 (Public Law 380, Seventy-eighth Congress), respecting bases for the mutual protection of the Philippine Islands and the United States.

SEC. 7. For the purposes of this Act the term "Philippine Government" shall mean "Government of the Commonwealth of the Philippines" until the date of independence, and thereafter it shall mean the "Government of the Republic of the Philippines".

Approved July 3, 1946.

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[3] See Public Law 885, 81st Cong., approved December 21, 1950, printed at page 129 of this booklet, which amended this section.

[PUBLIC LAW 370—80TH CONGRESS]

[61 Stat. 784]

JOINT RESOLUTION To provide for returns of Italian property in the United States, and for other purposes.

Whereas article 79 of the Treaty of Peace with Italy, signed at Paris on February 10, 1947, grants to the Allied and Associated Powers the right to seize and retain "all property rights and interests which on the coming into force of the present treaty are within its territory and belong to Italy or to Italian nationals, and to apply such property or the proceeds thereof to such purposes as it may desire, within the limits of its claims and those of its nationals against Italy or Italian nationals, including debts, other than claims fully satisfied under other articles of the present treaty" and further provides that "All Italian property, or the proceeds thereof, in excess of the amount of such claims, shall be returned"; and

Whereas, pursuant to article 79 of the treaty of peace, negotiations have been entered into between the Governments of the United States and of Italy looking toward an agreement under which, upon the return of property, formerly Italian, in the United States, Italy will place at the disposal of the United States funds to be used in meeting certain claims of nationals of the United States; and

Whereas, for the purpose of carrying out such agreement, it is desirable to authorize, in accordance with the procedures provided for in section 32 of the Trading With the Enemy Act of October 6, 1917 (40 Stat. 411), as amended, return to Italy or citizens or subjects of Italy, or corporations or associations organized under the laws of Italy, of property vested in or transferred to the United States or its agencies; and

Whereas, for the purpose of aiding the revival of the Italian economy and establishing it on a self-sustaining basis, it is desirable that there be returned or transferred to Italy those Italian vessels acquired by the United States after December 7, 1941, for use in the war effort and now owned by the United States and vessels of a total tonnage approximately equal to the tonnage of those Italian vessels seized by the United States after September 1, 1939, and lost while being employed in the United States war effort: Therefore be it

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President, or such officer or agency as he may designate, is hereby authorized to return, in accordance with the procedures provided for in section 32 of the Trading With the Enemy Act, as amended, any property or interest, or the net proceeds thereof, which has been, since December 18, 1941, vested in or transferred to any officer or agency of the United States pursuant to the Trading With the Enemy Act, as amended, and which immediately prior to such vesting or transfer was the property or interest of Italy or a citizen or subject of Italy, or a corporation or association organized under the laws of Italy.

NOTE.—Sections 2 and 3 of this Joint Resolution amended sections 32 and 33 of the Trading With the Enemy Act.

SEC. 4. The President is authorized upon such terms as he deems necessary (a) to transfer to the Government of Italy all vessels which

were under Italian registry and flag on September 1, 1939, and were thereafter acquired by the United States and are now owned by the United States; and (b) with respect to any vessel under Italian registry and flag on September 1, 1939, and subsequently seized in United States ports and thereafter lost while being employed in the United States war effort, to transfer to the Government of Italy surplus merchant vessels of the United States of a total tonnage approximately equal to the total tonnage of the Italian vessels lost: *Provided*, That no monetary compensation shall be paid either for the use by the United States or its agencies of former Italian vessels so acquired or seized or for the return or transfer of such vessels or substitute vessels.

Approved August 5, 1947.

[PUBLIC LAW 380—80TH CONGRESS]

[61 Stat. 794]

AN ACT To carry into effect certain parts relating to patents of the treaties of peace with Italy, Bulgaria, Hungary, and Rumania, ratified by the Senate on June 5, 1947, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the International Convention for the Protection of Industrial Property of 1883, as amended, is considered as reestablished and in full force and effect between the United States and Italy, Bulgaria, Hungary, and Rumania from the date of this Act and the nationals of the latter countries may hereafter apply for and obtain patents in the United States for their inventions and enjoy the rights and privileges thereof as provided in article 2 of said convention: *Provided, however*, That patents shall not be applied for or obtained, or if obtained, shall not be valid, for inventions heretofore made relating to war material as specified in article 6 of annex XV A of the Treaty of Peace with Italy, article 6 of annex IV of the Treaty of Peace with Bulgaria, article 6 of annex IV A of the Treaty of Peace with Hungary, and article 6 of annex IV A of the Treaty of Peace with Rumania.

SEC. 2. The rights of priority and the times for the taking of any action specified in sections 1 and 3 of Public Law 690, Seventy-ninth Congress, approved August 8, 1946, which had not expired on December 8, 1941, or which commenced after such date, shall be and are hereby extended until February 29, 1948, in favor of nationals of Italy, Bulgaria, Hungary, and Rumania, subject to the conditions and limitations specified in sections 1, 3, 4, and 10 of said Public Law 690: *Provided, however*, That nothing in this Act shall affect any act which has been or shall be done by virtue of special measures taken under legislative, executive, administrative, or military authority of the United States during World War II.

SEC. 3. Nationals of Germany and Japan may hereafter apply for and obtain patents in the United States for their inventions in accordance with the patent laws and enjoy the rights and privileges thereof: *Provided, however*, That patents obtained for such inventions shall be subject to any conditions and limitations with respect to duration, revocation, utilization, assignment, and licensing which may be im-

posed by Congress, or by the President in accordance with the provisions of any peace treaty hereafter entered into with Germany or Japan; *And provided further*, That, except for patents based on applications filed in the United States Patent Office prior to the date of enactment of this Act, patents may not be applied for or obtained, or if obtained, shall not be valid, for any invention made, or upon which an application was filed by any such national, before January 1, 1946, in Germany or Japan or in the territory of any other of the Axis Powers or in any territory occupied by the Axis forces.

Approved August 6, 1947.

[PUBLIC LAW 17—81ST CONGRESS]

[63 Stat. 12]

AN ACT To authorize payment of claims based on loss of or damage to property deposited by alien enemies.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Attorney General is hereby authorized to consider, ascertain, adjust, determine, settle, and pay in an amount not in excess of $1,000, when accepted by the claimant in full satisfaction and final settlement, any claim against the United States arising on or after December 7, 1941, for damage to, or loss or destruction of, personal property, the use, operation, possession, custody, or control of which was prohibited by proclamation Numbered 2525, dated December 7, 1941, and proclamations Numbered 2526 and Numbered 2527, dated December 8, 1941 (55 Stat. pt. 2, pp. 1700, 1705, and 1707), the possession of which property was not prohibited by law prior to said promulgations and which was deposited by alien enemies or United States citizens of Japanese ancestry in the manner provided in the regulations promulgated by the Attorney General on February 5, 1942, as amended (7 Fed. Reg. 844; 28 C. F. R. 30.1–30.16): *Provided*, That the damage to or loss or destruction of property shall not have been caused in whole or in part by any negligence or wrongful act on the part of the claimant, his agent, or employee, and that the claim is substantiated in such manner as the Attorney General may by regulation prescribe: *Provided further*, That nothing in this Act shall be construed to authorize the Attorney General to pay or settle any claims for damage to or loss or destruction of property which had been used for espionage or other illegal purposes on or before December 7, 1941.

SEC. 2. No claim shall be considered unless presented in writing within one year after the date of enactment of this Act.

SEC. 3. Any decision or settlement made by the Attorney General under the authority of this Act and such regulations as he may prescribe shall be final and conclusive, notwithstanding any other provision of law to the contrary.

SEC. 4. The Attorney General may report such claims as exceed $1,000 to Congress for its consideration.

SEC. 5. Such appropriations as may be required for the settlement of claims under this Act are hereby authorized.

Approved March 15, 1949.

[PUBLIC LAW 857—81ST CONGRESS]

[64 Stat. 1079]

JOINT RESOLUTION Authorizing the President, or such officer or agency as he may designate, to conclude and give effect to agreements for the settlement of intercustodial conflicts involving enemy property.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the President, or such officer or agency as he may designate, is authorized to conclude and give effect to agreements to further the amicable and expeditious settlement of intercustodial conflicts involving enemy property, subject to the following:

(1) The authority herein granted shall extend only to agreements with governments with which the United States was not at war in World War II.

(2) Such agreements shall be in accordance with the policy of protecting and making available for utilization the American and nonenemy interests in such property and further the elimination of enemy interests in such property and the efficient administration and liquidation of enemy property in the United States.

(3) For the purposes of this resolution, the United States as to any intergovernmental agreements hereafter negotiated shall seek treatment equal to that accorded United States nationals for persons who, although citizens or residents of an enemy country before or during World War II, were deprived of full rights of citizenship or substantially deprived of liberty by laws, decrees, or regulations of such enemy country discriminating against racial, religious, or political groups: *Provided*, That on the effective date of this resolution such persons were (1) permanent residents of the United States and (2) had declared their intention to become citizens of the United States in conformity with the provisions of the Nationality Act of 1940, as amended; and that such persons shall have acquired citizenship of the United States prior to the effective date of any intergovernmental agreement hereafter negotiated.

(4) Reimbursement to the United States by other governments pursuant to such agreements shall be administered as vested property: *Provided*, That nothing contained in this Act shall hinder, restrict or limit the payment of claims from the War Claims Fund established by section 13 of the War Claims Act of 1948 (Public Law 896, 80th Congress, July 3, 1948; 62 Stat. 1240; 50 U. S. C. App. 2001–2013), as amended.

Approved September 28, 1950.

[PUBLIC LAW 859—81ST CONGRESS]

[64 Stat. 1080]

AN ACT To amend section 32 (a) (2) of the Trading With the Enemy Act.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subdivision (D) of paragraph (2) of section 32 (a) of the Trading With the Enemy Act, as amended, is amended by inserting after the words

"citizenship under the law of such nation" a colon and the following: "*And provided further*, That, notwithstanding the provisions of subdivision (C) hereof and of this subdivision (D), return may be made to an individual who at all times since December 7, 1941, was a citizen of the United States, or to an individual who, having lost United States citizenship solely by reason of marriage to a citizen or subject of a foreign country, reacquired such citizenship prior to the date of enactment of this proviso if such individual would have been a citizen of the United States at all times since December 7, 1941, but for such marriage: *And provided further*, That the aggregate value of returns made pursuant to the foregoing proviso shall not exceed $5,000,000; and in making returns under such proviso the Alien Property Custodian shall to the extent practicable make such returns in the order in which notices of claims therefor were received and may return any property or interest if the value thereof, taken together with the aggregate value of property and interests already returned pursuant to such proviso, does not exceed $5,000,000;".

SEC. 2. There shall be included in the report made to Congress pursuant to section 6 of the Trading With the Enemy Act, as amended, a statement of (1) the names and nationalities of persons who have filed notice of claim for the return of any property or interest under section 1 of this Act, the date of the filing of such notice of claim; and the estimated value of the property or interest, and (2) the names and nationalities of persons to whom returns have been made of any property or interest under section 1 of this Act and the value of such property or interest.

Approved September 29, 1950.

[PUBLIC LAW 885—81ST CONGRESS]

[64 Stat. 1116]

AN ACT To amend the Philippine Property Act of 1946.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the final proviso of section 3 of the Philippine Property Act of 1946 (60 Stat. 418) is hereby amended to read as follows: "*And provided further*, That any suit authorized under the Trading With the Enemy Act, as amended, with respect to property vested in or transferred to the President of the United States, the Alien Property Custodian, or any officer or agency designated by the President of the United States hereunder, which at the time of such vesting or transfer was located within the Philippines, shall after July 4, 1946, be brought, in the appropriate court of first instance of the Republic of the Philippines, against the officer or agency hereunder designated by the President of the United States with such right of appeal therefrom as may be provided by law, but suits with respect to such property shall after ninety days from the enactment of this Act be brought only in the courts of the United States."

Approved December 21, 1950.

[PUBLIC LAW 181—82D CONGRESS]

[65 Stat. 451]

JOINT RESOLUTION To terminate the state of war between the United States and the Government of Germany.

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the state of war declared to exist between the United States and the Government of Germany by the joint resolution of Congress approved December 11, 1941, is hereby terminated and such termination shall take effect on the date of enactment of this resolution: *Provided, however*, That notwithstanding this resolution and any proclamation issued by the President pursuant thereto, any property or interest which prior to January 1, 1947, was subject to vesting or seizure under the provisions of the Trading With the Enemy Act of October 6, 1917 (40 Stat. 411), as amended, or which has heretofore been vested or seized under that Act, including accruals to or proceeds of any such property or interest, shall continue to be subject to the provisions of that Act in the same manner and to the same extent as if this resolution had not been adopted and such proclamation had not been issued. Nothing herein and nothing in such proclamation shall alter the status, as it existed immediately prior hereto, under that Act, of Germany or of any person with respect to any such property or interest.

Approved October 19, 1951.

[EXTRACT FROM PUBLIC LAW 110, 84TH CONGRESS]

[69 Stat. 194]

PAYMENT OF WORLD WAR II CLAIMS

* * * * * * *

Provided further, That unless otherwise authorized by law no claims shall be allowed or paid under the provisions of said War Claims Act of 1948 from any funds other than those covered into the Treasury pursuant to the provisions of section 39 of the Trading With the Enemy Act of October 6, 1917, as amended, as provided by section 13 (a) of said War Claims Act of 1948.

* * * * * * *

Approved June 29, 1955.

[NOTE.—Similar provisions were contained in prior appropriation acts.]

[EXTRACT FROM PUBLIC LAW 133, 84TH CONGRESS]

[69 Stat. 273]

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OFFICE OF ALIEN PROPERTY

SALARIES AND EXPENSES

The Attorney General, or such officer as he may designate, is hereby authorized to pay out of any funds or other property or interest vested in him or transferred to him pursuant to or with respect to the Trading With the Enemy Act of October 6, 1917, as amended (50 U. S. C. App.), necessary expenses incurred in carrying out the powers and duties conferred on the Attorney General pursuant to said Act: *Provided*, That not to exceed $2,800,000 shall be available in the current fiscal year for the general administrative expenses of the Office of Alien Property, including rent of private or Government-owned space in the District of Columbia; and expenses of attendance at meetings of organizations concerned with the purposes of this authorization: *Provided further*, That on or before November 1 of the current fiscal year, the Attorney General shall make a report to the Appropriations Committees of the Senate and the House of Representatives giving detailed information on all administrative and nonadministrative expenses incurred during the next preceding fiscal year in connection with the activities of the Office of Alien Property: *Provided further*, That of the total amount herein authorized the amount of $100,000 is to be transferred to the appropriation for "Salaries and expenses, general administration", Justice.

* * * * * * *

Approved July 7, 1955.

[NOTE.—Similar provisions were contained in prior appropriation acts.]

EXECUTIVE ORDER NO. 8389, OF APRIL 10, 1940, AS AMENDED

By virtue of and pursuant to the authority vested in me by section 5 (b) of the Act of October 6, 1917 (40 Stat. 415), as amended, by virtue of all other authority vested in me, and by virtue of the existence of a period of unlimited national emergency, and finding that this Order is in the public interest and is necessary in the interest of national defense and security, I, Franklin D. Roosevelt, President of the United States of America, do prescribe the following:

Executive Order No. 8389 of April 10, 1940, as amended, is amended to read as follows:

SECTION 1. All of the following transactions are prohibited, except as specifically authorized by the Secretary of the Treasury by means of regulations, rulings, instructions, licenses, or otherwise, if (i) such

transactions are by, or on behalf of, or pursuant to the direction of any foreign country designated in this Order, or any national thereof, or (ii) such transactions involve property in which any foreign country designated in this Order, or any national thereof, has at any time on or since the effective date of this Order had any interest of any nature whatsoever, direct or indirect:

A. All transfers of credit between any banking institutions within the United States; and all transfers of credit between any banking institution within the United States and any banking institution outside the United States (including any principal, agent, home office, branch, or correspondent outside the United States, of a banking institution within the United States);

B. All payments by or to any banking institution within the United States;

C. All transactions in foreign exchange by any person within the United States;

D. The export or withdrawal from the United States, or the earmarking of gold or silver coin or bullion or currency by any person within the United States;

E. All transfers, withdrawals or exportations of, or dealings in, any evidences of indebtedness or evidences of ownership of property by any person within the United States; and

F. Any transaction for the purpose or which has the effect of evading or avoiding the foregoing prohibitions.

SEC. 2.

A. All of the following transactions are prohibited, except as specifically authorized by the Secretary of the Treasury by means of regulations, rulings, instructions, licenses, or otherwise:

(1) The acquisition, disposition or transfer of, or other dealing in, or with respect to, any security or evidence thereof on which there is stamped or imprinted, or to which there is affixed or otherwise attached, a tax stamp or other stamp of a foreign country designated in this Order or a notarial or similar seal which by its contents indicates that it was stamped, imprinted, affixed or attached within such foreign country, or where the attendant circumstances disclose or indicate that such stamp or seal may, at any time, have been stamped, imprinted, affixed or attached thereto; and

(2) The acquisition by, or transfer to, any person within the United States of any interest in any security or evidence thereof if the attendant circumstances disclose or indicate that the security or evidence thereof is not physically situated within the United States.

B. The Secretary of the Treasury may investigate, regulate, or prohibit under such regulations, rulings, or instructions as he may prescribe, by means of licenses or otherwise, the sending, mailing, importing or otherwise bringing, directly or indirectly, into the United States, from any foreign country, of any securities or evidences thereof or the receiving or holding in the United States of any securities or evidences thereof so brought into the United States.

SEC. 3. The term "foreign country designated in this Order" means a foreign country included in the following schedule, and the term "effective date of this Order" means with respect to any such foreign

country, or any national thereof, the date specified in the following schedule:

(a) April 8, 1940—
Norway and
Denmark;

(b) May 10, 1940—
The Netherlands,
Belgium, and
Luxembourg;

(c) June 17, 1940—
France (including
Monaco);

(d) July 10, 1940—
Latvia,
Estonia, and
Lithuania;

(e) October 9, 1940—
Rumania;

(f) March 4, 1941—
Bulgaria;

(g) March 13, 1941—
Hungary;

(h) March 24, 1941—
Yugoslavia;

(i) April 28, 1941—
Greece;

(j) June 14, 1941—
Albania,
Andorra,
Austria,
Czechoslovakia,
Danzig,
Finland,
Germany,
Italy,
Liechtenstein,
Poland,
Portugal,
San Marino,
Spain,
Sweden,
Switzerland, and
Union of Soviet Socialist Republics;

(k) June 14, 1941—
China, and
Japan;

(l) June 14, 1941—
Thailand;

(m) June 14, 1941—
Hong Kong.

The "effective date of this Order" with respect to any foreign country not designated in this Order shall be deemed to be June 14, 1941.

SEC. 4.

A. The Secretary of the Treasury and/or the Attorney General may require, by means of regulations, rulings, instructions, or otherwise, any person to keep a full record of, and to furnish under oath, in the form of reports or otherwise, from time to time and at any time or times, complete information relative to any transaction referred to in section 5 (b) of the Act of October 6, 1917 (40 Stat. 415), as amended, or relative to any property in which any foreign country or any national thereof has any interest of any nature whatsoever, direct or indirect, including the production of any books of account, contracts, letters, or other papers, in connection therewith, in the custody or control of such person, either before or after such transaction is completed; and the Secretary of the Treasury and/or the Attorney General may, through any agency, investigate any such transaction or act, or any violation of the provisions of this Order.

B. Every person engaging in any of the transactions referred to in sections 1 and 2 of this Order shall keep a full record of each such transaction engaged in by him, regardless of whether such transaction is effected pursuant to license or otherwise, and such record shall be available for examination for at least one year after the date of such transaction.

SEC. 5.

A. As used in the first paragraph of section 1 of this Order "transactions [which] involve property in which any foreign country des-

ignated in this Order, or any national thereof, has * * * any interest of any nature whatsoever, direct or indirect," shall include, but not by way of limitation (i) any payment or transfer to any such foreign country or national thereof, (ii) any export or withdrawal from the United States to such foreign country, and (iii) any transfer of credit, or payment of an obligation, expressed in terms of the currency of such foreign country.

B. The term "United States" means the United States and any place subject to the jurisdiction thereof, and the term "continental United States" means the states of the United States, the District of Columbia, and the Territory of Alaska; provided, however, that for the purposes of this Order the term "United States" shall not be deemed to include any territory included within the term "foreign country" as defined in paragraph D of this section.

C. The term "person" means an individual, partnership, association, corporation, or other organization.

D. The term "foreign country" shall include, but not by way of limitation,

(i) The state and the government thereof on the effective date of this Order as well as any political subdivision, agency, or instrumentality thereof or any territory, dependency, colony, protectorate, mandate, dominion, possession, or place subject to the jurisdiction thereof,

(ii) Any other government (including any political subdivision, agency, or instrumentality thereof) to the extent and only to the extent that such government exercises or claims to exercise *de jure* or *de facto* sovereignty over the area which on such effective date constituted such foreign country, and

(iii) Any territory which on or since the effective date of this Order is controlled or occupied by the military, naval, or police forces or other authority of such foreign country,

(iv) Any person to the extent that such person is, or has been, or to the extent that there is reasonable cause to believe that such person is, or has been, since such effective date, acting or purporting to act directly or indirectly for the benefit or on behalf of any of the foregoing,

Hong Kong shall be deemed to be a foreign country within the meaning of this subdivision.

E. The term "national" shall include,

(i) Any person who has been domiciled in, or subject, citizen or resident of a foreign country at any time on or since the effective date of this Order.

(ii) Any partnership, association, corporation or other organization, organized under the laws of, or which on or since the effective date of this Order had or has had its principal place of business in such foreign country, or which on or since such effective date was or has been controlled by, or a substantial part of the stock, shares, bonds, debentures, notes, drafts, or other securities or obligations of which, was or has been owned or controlled by, directly or indirectly, such foreign country and/or one or more nationals thereof as herein defined,

(iii) Any person to the extent that such person is, or has been, since such effective date, acting or purporting to act directly or

indirectly for the benefit or on behalf of any national of such foreign country, and

(iv) Any other person who there is reasonable cause to believe is a "national" as herein defined.

In any case in which by virtue of the foregoing definition a person is a national of more than one foreign country, such person shall be deemed to be a national of each such foreign country. In any case in which the combined interests of two or more foreign countries designated in this Order and/or nationals thereof are sufficient in the aggregate to constitute, within the meaning of the foregoing, control or 25 per centum or more of the stock, shares, bonds, debentures, notes, drafts, or other securities or obligations of a partnership, association, corporation or other organization, but such control or a substantial part of such stock, shares, bonds, debentures, notes, drafts or other securities or obligations is not held by any one such foreign country and/or national thereof, such partnership, association, corporation or other organization shall be deemed to be a national of each of such foreign countries. The Secretary of the Treasury shall have full power to determine that any person is or shall be deemed to be a "national" within the meaning of this definition, and the foreign country of which such person is or shall be deemed to be a national. Without limitation of the foregoing, the term "national" shall also include any other person who is determined by the Secretary of the Treasury to be, or to have been, since such effective date, acting or purporting to act directly or indirectly for the benefit or under the direction of a foreign country designated in this Order or national thereof, as herein defined.

F. The term "banking institution" as used in this Order shall include any person engaged primarily or incidentally in the business of banking, of granting or transferring credits, or of purchasing or selling foreign exchange or procuring purchasers and sellers thereof, as principal or agent, or any person holding credits for others as a direct or incidental part of his business, or broker; and, each principal, agent, home office, branch or correspondent of any person so engaged shall be regarded as a separate "banking institution."

G. The term "this Order," as used herein, shall mean Executive Order No. 8389 of April 10, 1940, as amended.

SEC. 6. Executive Order No. 8389 of April 10, 1940, as amended, shall no longer be deemed to be an amendment to or a part of Executive Order No. 6560 of January 15, 1934. Executive Order No. 6560 of January 15, 1934, and the Regulations of November 12, 1934, are hereby modified insofar as they are inconsistent with the provisions of this Order, and except as so modified, continue in full force and effect. Nothing herein shall be deemed to revoke any license, ruling, or instruction now in effect and issued pursuant to Executive Order No. 6560 of January 15, 1934, as amended, or pursuant to this Order: *Provided however*, That all such licenses, rulings, or instructions shall be subject to the provisions hereof. Any amendment, modification or revocation by or pursuant to the provisions of this Order of any orders, regulations, rulings, instructions or licenses shall not affect any act done, or any suit or proceeding had or commenced in any civil or criminal case prior to such amendment, modification or revocation, and all penalties,

forfeitures and liabilities under any such orders, regulations, rulings, instructions or licenses shall continue and may be enforced as if such amendment, modification or revocation had not been made.

SEC. 7. Without limitation as to any other powers or authority of the Secretary of the Treasury or the Attorney General under any other provision of this Order, the Secretary of the Treasury is authorized and empowered to prescribe from time to time regulations, rulings, and instructions to carry out the purposes of this Order and to provide therein or otherwise the conditions under which licenses may be granted by or through such officers or agencies as the Secretary of the Treasury may designate, and the decision of the Secretary with respect to the granting, denial or other disposition of an application or license shall be final.

SEC. 8. Section 5 (b) of the Act of October 6, 1917, as amended, provides in part:

> "* * * Whoever willfully violates any of the provisions of this subdivision or of any license, order, rule or regulation issued thereunder, shall, upon conviction, be fined not more than $10,000, or, if a natural person, may be imprisoned for not more than ten years, or both; and any officer, director, or agent of any corporation who knowingly participates in such violation may be punished by a like fine, imprisonment, or both."

SEC. 9. This Order and any regulations, rulings, licenses, or instructions issued hereunder may be amended, modified or revoked at any time.

EXECUTIVE ORDER NO. 9095, OF MARCH 11, 1942, AS AMENDED

By virtue of the authority vested in me by the Constitution, by the First War Powers Act, 1941, by the Trading With the Enemy Act of October 6, 1917, as amended, and as President of the United States, it is hereby ordered as follows:

Executive Order No. 9095 of March 11, 1942, is amended to read as follows:

1. There is hereby established in the Office for Emergency Management of the Executive Office of the President the Office of Alien Property Custodian, at the head of which shall be an Alien Property Custodian appointed by the President. The Alien Property Custodian shall receive compensation at such rate as the President shall approve and in addition shall be entitled to actual and necessary transportation, subsistence, and other expenses incidental to the performance of his duties. Within the limitation of such funds as may be made available for that purpose, the Alien Property Custodian may appoint assistants and other personnel and delegate to them such functions as he may deem necessary to carry out the provisions of this Executive Order.

2. The Alien Property Custodian is authorized and empowered to take such action as he deems necessary in the national interest, including, but not limited to, the power to direct, manage, supervise, control or vest, with respect to:

(a) Any business enterprise within the United States which is a national of a designated enemy country and any property of

any nature whatsoever owned or controlled by, payable or deliverable to, held on behalf of or on account of or owing to or which is evidence of ownership or control of any such business enterprise, and any interest of any nature whatsoever in such business enterprise held by an enemy country or national thereof;

(b) Any other business enterprise within the United States which is a national of a foreign country and any property of any nature whatsoever owned or controlled by, payable or deliverable to, held on behalf of or on account of or owing to or which is evidence of ownership or control of any such business enterprise, and any interest of any nature whatsoever in such business enterprise held by a foreign country or national thereof, when it is determined by the Custodian and he has certified to the Secretary of the Treasury that it is necessary in the national interest, with respect to such business enterprise, either (i) to provide for the protection of the property, (ii) to change personnel or supervise the employment policies, (iii) to liquidate, reorganize, or sell, (iv) to direct the management in respect to operations, or (v) to vest;

(c) Any other property or interest within the United States of any nature whatsoever owned or controlled by, payable or deliverable to, held on behalf of or on account of, or owing to, or which is evidence of ownership or control by, a designated enemy country or national thereof: *Provided, however*, That with respect to any such country or national other than Germany or Japan or any national thereof, such property or interest shall not include cash, bullion, moneys, currencies, deposits, credits, credit instruments, foreign exchange, and securities except to the extent that the Alien Property Custodian determines that such cash, bullion, moneys, currencies, deposits, credits, credit instruments, foreign exchange, and securites are necessary for the maintenance or safeguarding of other property belonging to the same designated enemy country or the same national thereof and subject to vesting pursuant to section 2 hereof;

(d) Any patent, patent application, design patent, design patent application, copyright, copyright application, trade-mark or trade-mark application or right related thereto in which any foreign country or national thereof has any interest and any property of any nature whatsoever (including, without limitation, royalties and license fees) payable or held with respect thereto, and any interest of any nature whatsoever held therein by any foreign country or national thereof;

(e) Any ship or vessel or interest therein, in which any foreign country or national thereof has an interest; and

(f) Any property of any nature whatsoever which is in the process of administration by any person acting under judicial supervision or which is in partition, libel, condemnation or other similar proceedings and which is payable or deliverable to, or claimed by, a designated enemy country or national thereof.

When the Alien Property Custodian determines to exercise any power and authority conferred upon him by this section with respect to any of the foregoing property over which the Secretary of the Treasury is exercising any control and so notifies the Secretary of the Treasury in

writing, the Secretary of the Treasury shall release all control of such property, except as authorized or directed by the Alien Property Custodian.

3. Subject to the provisions of this Executive Order, all powers and authority conferred upon me by sections 3 (a) and 5 (b) of the Trading with the Enemy Act, as amended, are hereby delegated to the Secretary of the Treasury or any person, agency, or instrumentality designated by him: *Provided, however*, That when any property or interest, not belonging to a foreign government or central bank, shall be vested by the Secretary of the Treasury, such property or interest shall be vested in, and dealt with by, the Alien Property Custodian upon the terms directed by the Secretary of the Treasury. Except as otherwise provided herein, this Executive Order shall not be deemed to modify or amend Executive Order No. 8389, as amended, or the President's Proclamation of July 17, 1941, or Executive Order No. 8839, as amended, or the regulations, rulings, licenses and other action taken thereunder, or in connection therewith.

4. Without limitation as to any other powers or authority of the Secretary of the Treasury or the Alien Property Custodian under any other provision of this Executive Order, the Secretary of the Treasury and the Alien Property Custodian are authorized and empowered, either jointly or severally, to prescribe from time to time, regulations, rulings, and instructions to carry out the purposes of this Executive Order. The Secretary of the Treasury and the Alien Property Custodian each shall make available to the other all information in his files to enable the other to discharge his functions, and shall keep each other currently informed as to investigations being conducted with respect to enemy ownership or control of business enterprises within the United States.

5. The Alien Property Custodian is authorized to issue appropriate regulations governing the service of process or notice upon any person within any designated enemy country or any enemy-occupied territory in connection with any court or administrative action or proceeding within the United States. The Alien Property Custodian also is authorized to take such other and further measures in connection with representing any such person in any such action or proceeding as in his judgment and discretion is or may be in the interest of the United States. If, as a result of any such action or proceeding, any such person obtains, or is determined to have, an interest in any property (including money judgments), such property, less an amount equal to the costs and expenses incurred by the Alien Property Custodian in such action or proceeding, shall be subject to the provisions of Executive Order No. 8389, as amended: *Provided, however*, That this shall not be deemed to limit the powers of the Alien Property Custodian under section 2 of this Order: *And provided further*, That the Alien Property Custodian may vest an amount of such property equal to the costs and expenses incurred by the Alien Property Custodian in such action or proceeding.

6. To enable the Alien Property Custodian to carry out his functions under this Executive Order, there are hereby delegated to the Alien Property Custodian or any person, agency, or instrumentality designated by him all powers and authority conferred upon me by section 5 (b) of the Trading With the Enemy Act, as amended, including, but

not limited to, the power to make such investigations and require such reports as he deems necessary or appropriate to determine whether any enterprise or property should be subject to his jurisdiction and control under this Executive Order. The powers and authority conferred upon the Alien Property Custodian by Executive Order No. 9142 shall be administered by him in conformity with the provisions of this Executive Order.

7. In the exercise of the authority herein delegated, the Alien Property Custodian shall be subject to the provisions of Executive Order No. 8839 of July 30, 1941, and shall designate a representative to the Board of Economic Warfare in accordance with section 6 thereof.

8. All records and other property (including office equipment) of the Treasury Department which are used primarily in the administration of powers and duties to be exercised by the Alien Property Custodian, and such personnel as is used primarily in the administration of such powers and duties and which was hired by the Treasury Department after September 1, 1941 (including officers whose chief duties relate to the administration of such powers and duties), as the Secretary of the Treasury and the Alien Property Custodian shall jointly certify for transfer, shall be transferred to the Office of the Alien Property Custodian. In the event of disagreement concerning the transfer of any personnel, records, or property, the determination shall be made by the Director of the Bureau of the Budget, pursuant to the formula here prescribed. Any personnel transferred pursuant to this Executive Order shall be transferred without loss of such Civil Service status or eligibility therefor as they may have.

9. This Executive Order shall not be deemed to modify or amend Executive Order No. 8843 of August 9, 1941, and the regulations, rulings, licenses and other action taken thereunder. Any and all action heretofore taken by the Secretary of the Treasury or the Alien Property Custodian, or by any person, agency, or instrumentality designated by either of them, pursuant to sections 3 (a) and 5 (b) of the Trading with the Enemy Act, as amended, or pursuant to prior Executive Orders, and any and all action heretofore taken by the Board of Governors of the Federal Reserve System pursuant to Executive Order No. 8843 of August 9, 1941, are hereby confirmed and ratified.

10. For the purpose of this Executive Order:

(a) The term "designated enemy country" shall mean any foreign country against which the United States has declared the existence of a state of war (Germany, Italy, Japan, Bulgaria, Hungary, and Rumania) and any other country with which the United States is at war in the future. The term "national" shall have the meaning prescribed in section 5 of Executive Order No. 8389, as amended: *Provided, however*, That persons not within designated enemy countries (even though they may be within enemy-occupied countries or areas) shall not be deemed to be nationals of a designated enemy country unless the Alien Property Custodian determines: (i) that such person is controlled by or acting for or on behalf of (including cloaks for) a designated enemy country or a person within such country; or (ii) that such person is a citizen or subject of a designated enemy country and within an enemy-occupied country or area; or (iii)) that the

national interest of the United States requires that such person be treated as a national of a designated enemy country. For the purpose of this Executive Order any determination by the Alien Property Custodian that any property or interest of any foreign country or national thereof is the property or interest of a designated enemy country or national thereof shall be final and conclusive as to the power of the Alien Property Custodian to exercise any of the power or authority conferred upon me by section 5 (b) of the Trading with the Enemy Act, as amended.

(b) The term "business enterprise within the United States" shall mean any individual proprietorship, partnership, corporation or other organization primarily engaged in the conduct of a business within the United States, and any other individual proprietorship, partnership, corporation or other organization to the extent that it has an established office within the United States engaged in the conduct of business within the United States.

11. The Secretary of the Treasury or the Alien Property Custodian, as the case may be, shall, except as otherwise agreed to by the Secretary of State, consult with the Secretary of State before vesting any property or interest pursuant to this Executive Order, and the Secretary of the Treasury shall consult with the Secretary of State before issuing any Order adding any additional foreign countries to section 3 of Executive Order No. 8389, as amended.

12. Any orders, regulations, rulings, instructions, licenses or other actions issued or taken by any person, agency or instrumentality referred to in this Executive Order, shall be final and conclusive as to the power of such person, agency or instrumentality to exercise any of the power or authority conferred upon me by sections 3 (a) and 5 (b) of the Trading with the Enemy Act, as amended; and to the extent necessary and appropriate to enable them to perform their duties and functions hereunder, the Secretary of the Treasury and the Alien Property Custodian shall be deemed to be authorized to exercise severally any and all authority, rights, privileges and powers conferred on the President by sections 3 (a) and 5 (b) of the Trading with the Enemy Act of October 6, 1917, as amended, and by sections 301 and 302 of title III of the First War Powers Act, 1941, approved December 18, 1941. No persons affected by any order, regulation, ruling, instruction, license or other action issued or taken by either the Secretary of the Treasury or the Alien Property Custodian shall be entitled to challenge the validity thereof or otherwise excuse his actions, or failure to act, on the ground that pursuant to the provisions of this Executive Order, such order, regulation, ruling, instruction, license or other action was within the jurisdiction of the Alien Property Custodian rather than the Secretary of the Treasury or vice versa.

13. Any regulations, rulings, instructions, licenses, determinations or other actions issued, made or taken by any agency or person referred to in this Executive Order purporting to be under the provisions of this Executive Order or any other proclamation, order or regulation, issued under sections 3 (a) or 5 (b) of the Trading with the Enemy Act, as amended, shall be conclusively presumed to have been issued, made or taken after appropriate consultation as herein required and after appropriate certification in any case in which a certification is required pursuant to the provisions of this Executive Order.

EXECUTIVE ORDER NO. 9325, OF APRIL 7, 1943

By virtue of the authority vested in me by the Constitution and statutes of the United States, particularly by Title III of the First War Powers Act, 1941, it is hereby ordered as follows:

1. Until it is otherwise provided, the Alien Property Custodian is authorized and empowered to pay out of any funds lawfully in his custody or under his control all necessary expenses incurred by the Office of Alien Property Custodian in carrying out the powers and duties vested in him pursuant to Title III of the First War Powers Act, 1941, and the applicable orders issued thereunder. Such expenses shall be allocated and recovered as provided in section 2 hereof.

2. The Alien Property Custodian is authorized to retain, allocate and recover, as a charge against any specific property or any other property of which the former owner of the specific property was divested, expenses attributable to such specific property with respect to which he has exercised or may hereafter exercise any power heretofore or hereafter conferred upon him. In addition to such expenses, the Alien Property Custodian is authorized to retain, allocate and recover at such time or times as he may deem practicable, as a charge against money or property in his custody or under his control, such amounts as may be necessary in connection with the general administrative expenses of the Office of Alien Property Custodian which have been or may be paid and which are not practicably allocable to a specific property.

3. The power and authority herein granted shall not be limited by the filing of a claim or the institution of a suit relating to any property subject to the authority of the Alien Property Custodian.

4. This order shall not be construed as a limitation upon or in derogation of any powers heretofore granted.

5. The Office of Alien Property Custodian shall submit to the Bureau of the Budget (a) prior to April 30, 1943, an estimate of general administrative expenses for the remainder of the current fiscal year, (b) prior to the end of the current and of each subsequent fiscal year, at such time as may be specified by the Director of the Bureau of the Budget, an estimate of such expenses for the succeeding fiscal year, and (c) any supplemental estimates of such expenses if and as the need arises. After April 30, 1943, no general administrative expenses authorized to be paid pursuant to this order shall be incurred or paid by the Office of Alien Property Custodian beyond the amounts approved by the Director of the Bureau of the Budget upon submissions as above set forth.

EXECUTIVE ORDER 9725, OF MAY 16, 1946

By virtue of the authority vested in me by Title III of the First War Powers Act, 1941 (50 U. S. C. App., Sup., 616 et seq.), as amended, by the Trading with the Enemy Act of October 6, 1917 (50 U. S. C. App., 1 et seq.), as amended, and as President of the United States, it is hereby ordered as follows:

The Alien Property Custodian is designated as the officer to administer the powers and authority conferred upon the President by section 20 of the Trading with the Enemy Act, as amended by Public Law 322, 79th Congress, approved March 8, 1946, and by section 32 of the said act, as added by the said Public Law 322.

The Alien Property Custodian may delegate to officers and employees of the Office of Alien Property Custodian such functions as he may deem necessary to carry out the provisions of this order.

This order shall not be construed as revoking or limiting any power or authority heretofore delegated to the Alien Property Custodian.

EXECUTIVE ORDER 9760, OF JULY 23, 1946

By virtue of the authority vested in me by the Constitution and statutes, including the Trading with the Enemy Act of October 6, 1917, as amended, and the First War Powers Act, 1941, and as President of the United States, it is hereby ordered as follows:

1. The Secretary of State is authorized and empowered as he deems necessary in the national interest to direct, manage, supervise, or control diplomatic and consular property within the United States owned or controlled by Germany or Japan, including all assets on the premises of such property.

2. The Alien Property Custodian shall not exercise any power and authority conferred upon him by any other Executive order with respect to diplomatic and consular property within the United States owned or controlled by Germany or Japan except so far as the Secretary of State releases his authority over such diplomatic and consular property under this order and so notifies the Alien Property Custodian in writing.

3. When the Secretary of State determines to exercise any power and authority conferred upon him by this order with respect to any property over which the Secretary of the Treasury is exercising any control and so notifies the Secretary of the Treasury in writing, the Secretary of the Treasury shall release all control of such property, except as authorized or directed by the Secretary of State.

4. This order supersedes all conflicting provisions of prior Executive orders, including Executive Orders Nos. 8389, as amended, and 9095, as amended.

5. The Secretary of State is authorized to prescribe from time to time regulations, rulings, and instructions to carry out the purposes of this order.

EXECUTIVE ORDER 9788, OF OCTOBER 14, 1946

By virtue of the authority vested in me by the Constitution and statutes, including the Trading with the Enemy Act of October 6, 1917, 40 Stat. 411, as amended, and the First War Powers Act, 1941, 55 Stat. 838, as amended, and as President of the United States, it is hereby ordered, in the interest of the internal management of the Government as follows:

1. The Office of Alien Property Custodian in the Office for Emergency Management of the Executive Office of the President, established by Executive Order No. 9095 of March 11, 1942, is hereby terminated; and all authority, rights, privileges, powers, duties, and functions vested in such Office or in the Alien Property Custodian or transferred or delegated thereto are hereby vested in or transferred or delegated to the Attorney General, as the case may be, and shall be administered by him or under his direction and control by such officers and agencies of the Department of Justice as he may designate.

2. All property or interests vested in or transferred to the Alien Property Custodian or seized by him, and all proceeds thereof, which are held or administered by him on the effective date of this order are hereby transferred to the Attorney General.

3. All personnel, property, records, and funds of the Office of Alien Property Custodian are hereby transferred to the Department of Justice.

4. This order supersedes all prior Executive Orders to the extent that they are in conflict with this order.

5. This order shall become effective on October 15, 1946.

EXECUTIVE ORDER 9789, OF OCTOBER 14, 1946

By virtue of the authority vested in me by the Constitution and statutes, including the Trading with the Enemy Act of October 6, 1917, 40 Stat. 411, as amended, the Philippine Property Act of 1946 (Public Law 485, 79th Congress, approved July 3, 1946), and the First War Powers Act, 1941, 55 Stat. 838, as amended, and as President of the United States, it is hereby ordered, in the interests of the internal management of the Government, as follows:

1. There is established in the Office for Emergency Management of the Executive Office of the President the Philippine Alien Property Administration, at the head of which shall be a Philippine Alien Property Administrator appointed by the President, without regard to the civil-service laws. The Philippine Alien Property Administrator shall receive compensation at such rate as the President shall approve and in addition shall be entitled to actual and necessary transportation, housing, subsistence, and other expenses incidental to the performance of his duties. Within the limitation of such funds as may be made available for that purpose, and without regard to the civil-service laws, the Philippine Alien Property Administrator may appoint assistants and other personnel and delegate to them such functions as he may deem necessary to carry out the provisions of this order. Such personnel of the Office of Alien Property Custodian as are engaged in the exercise of the functions transferred hereunder, may be transferred to the Philippine Alien Property Administration without loss of such civil-service status or eligibility therefor as they may possess.

2. All authority, rights, privileges, powers, duties and functions vested in the Office of Alien Property Custodian or in the Alien Property Custodian or transferred or delegated thereto with respect to property located in the Philippines and property transferred by section 3 hereof are hereby vested in or transferred or delegated to the Philippine Alien Property Administrator.

3. The Alien Property Custodian is authorized and directed to transfer to the Philippine Alien Property Administrator all property or interests vested in or transferred to him which were located in the Philippines at the time of such vesting or transfer, or the proceeds thereof, less, however, such expenses as the Alien Property Custodian is authorized to charge against such property or proceeds. Such property or proceeds shall be administered and disposed of under the direction and control of the Philippine Alien Property Administrator in accordance with law.

4. The Philippine Alien Property Administrator shall, except as otherwise agreed to by the Secretary of State, consult with the Secretary of State before vesting any property or interest pursuant to this Executive Order.

5. The Alien Property Custodian is authorized and directed to transfer to the Philippine Alien Property Administrator such personnel, records, files, furniture, funds, authorizations, equipment and supplies as the Director of the Bureau of the Budget may determine to be necessary for the performance of the functions hereby transferred, but the Administrator shall reimburse the Custodian for the funds and the present value of the furniture, equipment and supplies so transferred.

6. The Philippine Alien Property Administrator, to the extent permitted by law, is authorized to pay out of any funds or other property or interests vested in him or transferred to him all necessary expenses of the Philippine Alien Property Administration in the performance of the functions hereby transferred.

7. Paragraph 5 of Executive Order No. 9142 (7 Fed. Reg. 2985) is amended to the extent that it requires that litigation under the Trading with the Enemy Act of October 6, 1917, as amended, and the Philippine Property Act of 1946, instituted in the courts of the Philippine Islands prior to July 4, 1946, be conducted under the supervision of the Attorney General. In any such litigation the Philippine Alien Property Administrator may appear personally or through attorneys appointed by him.

8. No action taken by the Alien Property Custodian under Executive Order No. 9747 of July 3, 1946, shall be challenged on the ground that it was within the jurisdiction of the Philippine Alien Property Administrator.

9. This order shall become effective on October 14, 1946.

EXECUTIVE ORDER 9818, OF JANUARY 7, 1947

By virtue of the authority vested in me by the Constitution and statutes, including the Trading with the Enemy Act of October, 1917, 40 Stat. 411, as amended, the Philippine Property Act of 1946, 60 Stat. 418, the First War Powers Act, 1941, 55 Stat. 838, as amended, section 1753 of the Revised Statutes, and the Civil Service Act, 22 Stat. 403, and as President of the United States, it is hereby ordered, in the interest of the internal management of the Government, as follows:

1. There is established in the Office for Emergency Management of the Executive Office of the President the Philippine Alien Property Administration, at the head of which shall be a Philippine Alien Property Administrator appointed by the President, without regard to the civil service laws. The Philippine Alien Property Administrator shall receive compensation at such rate as the President shall approve and in addition shall be entitled to actual and necessary transportation, housing, subsistence, and other expenses incidental to the performance of his duties. Within the limitation of such funds as may be made available for that purpose, and without regard to the civil service laws, the Philippine Alien Property Administrator may appoint assistants and other personnel and delegate to them such functions as he may deem necessary to carry out the provisions of this

order. Such personnel of the Office of Alien Property, Department of Justice, as are engaged in the exercise of the functions transferred hereunder, may be transferred to the Philippine Alien Property Administration without loss of such civil-service status or eligibility therefor as they may possess. Any employee, of a department or agency of the Federal Government who possesses special qualifications or experience of particular use to the Philippine Alien Property Administrator may, upon request by the Philippine Alien Property Administrator, be transferred with his consent and that of the department or agency in which he is employed, without loss of such civil-service status or eligibility therefor as such person may possess, to a position under the Philippine Alien Property Administrator. Upon application for reemployment made to the original employing department or agency within ninety days after termination of the service of the employee in the position to which he is transferred under the provisions of this section, and upon presentation of a statement by the Philippine Alien Property Administrator or his authorized representatives, reciting the date of termination of such service, that the services of such employee have been satisfactory and that such termination was not the result of delinquency or misconduct on the part of the employee, such employee shall, if qualified to perform the duties of his position, be reemployed in his original position or in a position of like seniority, status and pay, so long as the position the employee left, or one of like seniority, status, and pay is occupied by an employee with lower retention preference.

2. The Philippine Alien Property Administrator is hereby designated to exercise and perform, and there are hereby transferred to him, such rights, privileges, powers, authority, duties and functions, with respect to property located within the Philippines and property transferred pursuant to section 3 hereof, as were vested in or transferred or delegated to the Alien Property Custodian by the Trading with the Enemy Act, as amended, the Philippine Property Act of 1946, Executive Order 9095 of March 11, 1942, as amended, Executive Order 9142 of April 21, 1942, and Executive Order 9725 of May 16, 1946.

3. The Attorney General, or such officer or agency of the Department of Justice as he may designate, is authorized and directed to transfer to the Philippine Alien Property Administrator all property or interests vested in or transferred to him which were located in the Philippines at the time of such vesting or transfer, or the proceeds thereof, subject, however, to such expenses as the Attorney General is authorized to charge against such property or proceeds. Such property or proceeds shall be administered and disposed of under the direction and control of the Philippine Alien Property Administrator in accordance with law.

4. The Philippine Alien Property Administrator shall, except as otherwise agreed to by the Secretary of State, consult with the Secretary of State before vesting any property or interest pursuant to this Executive Order.

5. The Attorney General or such officer or agency of the Department of Justice as he may designate, is authorized and directed to transfer to the Philippine Alien Property Administrator such personnel, records, files, furniture, equipment, and supplies as the Director

of the Bureau of the Budget may determine to be necessary for the performance of the functions hereby transferred, but the Administrator shall reimburse the Attorney General for the furniture, equipment, and supplies so transferred.

6. The Philippine Alien Property Administrator, to the extent permitted by law, is authorized to pay out of any funds or other property or interests vested in him or transferred to him all necessary expenses of the Philippine Alien Property Administration in the performance of the functions hereby transferred: *Provided, however*, That the Philippine Alien Property Administrator shall submit to the Director of the Bureau of the Budget at such time or times and in such form as the Director shall require, an estimate of general administrative expenses for the remainder of the current fiscal year, and no general administrative expenses authorized to be paid pursuant to this order shall be incurred or paid by the Philippine Alien Property Administrator in excess of the amounts approved by the Bureau of the Budget upon submissions as herein required. All expenses for the current fiscal year shall, in addition, be reported to the Congress as early as practicable, with a request for ratification thereof; and no general administrative expenses shall be incurred or paid by the Philippine Alien Property Administrator after the fiscal year ending June 30, 1947, except pursuant to a further annual authorization by the Congress.

7. Paragraph 5 of Executive Order 9142 (7 Fed. Reg. 2985) is amended to the extent that it requires that litigation under the Trading with the Enemy Act of October 6, 1917, as amended, and the Philippine Property Act of 1946 instituted in the courts of the Philippine Islands prior to July 4, 1946, be conducted under the supervision of the Attorney General. In any such litigation the Philippine Alien Property Administrator may appear personally or through attorneys appointed by him.

8. No action taken by or on behalf of the Alien Property Custodian or the Attorney General as his successor under Executive Order 9747 of July 3, 1946, shall be challenged on the ground that it was within the jurisdiction of the Philippine Alien Property Administrator.

9. This order supersedes Executive Order 9789 of October 14, 1946, entitled "Establishing the Philippine Alien Property Administration and defining its functions."

EXECUTIVE ORDER 9921, OF JANUARY 10, 1948

Whereas section 3 of the Philippine Property Act of 1946 (60 Stat. 418) provides that property vested or transferred under the Trading with the Enemy Act (40 Stat. 411), as amended, which was located in the Philippines at the time of such vesting, or the proceeds thereof, and which shall remain after the satisfaction of any claim payable under the Trading with the Enemy Act, as amended, and after the payment of such costs and expenses of administration as may by law be charged against such property or proceeds, shall be transferred by the President of the United States to the Republic of the Philippines; and

Whereas section 3 of the said Philippine Property Act further provides that such property, or proceeds thereof, may be transferred by the President of the United States to the Republic of the Philippines

before final adjudication of such claims, costs, and expenses of administration as may by law be charged against such property, or proceeds thereof, upon indemnification acceptable to the President of the United States by the Republic of the Philippines for such claims, costs, and expenses of administration; and

Whereas the President of the Republic of the Philippines has given assurance, with respect to property, or proceeds thereof, which the United States may transfer to the Republic of the Philippines pursuant to section 3 of the Philippine Property Act of 1946, that the Republic of the Philippines will save harmless and indemnify the United States against all claims against such property, or proceeds thereof, as are payable under the Trading with the Enemy Act, as amended, and for such costs and expenses of administration of such property as are by law chargeable against the property, or proceeds thereof; and

Whereas such assurance of indemnification by the Republic of the Philippines is acceptable to the President of the United States; and

Whereas it appears administratively desirable that the Philippine Alien Property Administrator be authorized to act on behalf of the President of the United States with respect to certain property which may be transferred to the Republic of the Philippines pursuant to section 3 of the Philippine Property Act of 1946:

Now, therefore, by virtue of the authority vested in me by the said Trading with the Enemy Act (40 Stat. 411), as amended, and the said Philippine Property Act of 1946, and as President of the United States, it is hereby ordered as follows:

1. The Philippine Alien Property Administrator is authorized to transfer to the Republic of the Philippines in accordance with the provisions of section 3 of the Philippine Property Act of 1946, as soon as practicable after final payment of claims, costs, and expenses of administration, any property, or proceeds thereof, vested in or transferred to him pursuant to the Trading with the Enemy Act, as amended, and the Philippine Property Act of 1946.

2. The Philippine Alien Property Administrator is authorized to transfer to the Republic of the Philippines in accordance with the provisions of section 3 of the Philippine Property Act of 1946, prior to final adjudication of claims, costs, and expenses of administration when he deems it to be administratively feasible, and without further consideration of such transfer, property, or proceeds thereof vested in or transferred to him pursuant to the Trading with the Enemy Act, as amended, and the Philippine Property Act of 1946, against which, in the judgment of the Administrator, no substantial claims, expenses, or costs of administration are likely to be chargeable.

EXECUTIVE ORDER 9989, OF AUGUST 20, 1948

TRANSFERRING JURISDICTION OVER BLOCKED ASSETS TO THE ATTORNEY GENERAL

Whereas with the successful termination of hostilities, there has been a gradual release from control by the Treasury Department over foreign property and interests which had been blocked to prevent their looting by the Axis and their use in ways harmful to the war effort of the United States; and

Whereas certain of such foreign property and interests have not yet been unblocked; and

Whereas it is now necessary and desirable to place the jurisdiction over the assets remaining blocked on September 30, 1948, in the same agency which is administering the program of alien property control initiated under Executive Order No. 9095 of March 11, 1942, as amended, which program is presently being administered by the Attorney General:

Now, therefore, by virtue of the authority vested in me by the Constitution and the laws of the United States, including the Trading with the Enemy Act of October 6, 1917, as amended, and as President of the United States, it is hereby ordered as follows:

1. The Attorney General is hereby authorized and directed to take such action as he may deem necessary with respect to any property or interest of any nature whatsoever in which any foreign country designated in Executive Order No. 8389 of April 10, 1940, as amended, or any national thereof has any interest (including property subject to the proviso of paragraph (a) of General License No. 94, as amended (31 C. F. R., 1947 Supp., 131.94), and including any Scheduled Securities within the meaning of General Ruling No. 5, as amended (31 C. F. R., 1947 Supp., 131, App. A.), both issued by the Secretary of the Treasury) which on September 30, 1948, is not unblocked or otherwise removed from the restrictions of the said Executive Order No. 8389, as amended, by any order, regulation, ruling, instruction, license, or other action issued or taken by the Secretary of the Treasury. In the performance of his duties under this order, the Attorney General or any officer, person, agency, or instrumentality designated by him, may exercise all powers and authority vested in the President by sections 3 (a) and 5 (b) of the Trading with the Enemy Act, as amended. As used herein, the terms "national" and "foreign country" shall have the meanings prescribed in Executive Order No. 8389, as amended.

2. With respect to the property and interests referred to in section 1 hereof, all orders, regulations, rulings, instructions, or licenses issued by the Secretary of the Treasury under the authority of Executive Order No. 8389, as amended, and Executive Order No. 9095, as amended, and in force on September 30, 1948, shall continue in full force and effect except as amended, modified, or revoked by the Attorney General.

3. It is the policy of this order that administrative action under paragraph 1 hereof shall be taken by the Attorney General or any officer, person, agency, or instrumentality designated by him. However, nothing in this order shall be deemed to limit or remove any powers heretofore conferred upon the Secretary of the Treasury or the Attorney General by statute or by Executive Order. No person affected by any order, regulation, ruling, instruction, license, or other action issued or taken by either the Secretary of the Treasury or the Attorney General may challenge the validity thereof or otherwise excuse his actions, or failure to act, on the ground that pursuant to the provisions of this Executive order, such order, regulation, ruling, instruction, license, or other action was within the jurisdiction of the Attorney General rather than the Secretary of the Treasury or *vice versa*.

4. This order shall become effective as of midnight, September 30, 1948.

EXECUTIVE ORDER NO. 10244, OF MAY 17, 1951

By virtue of the authority vested in me by the Constitution and laws of the United States, including the Trading With the Enemy Act of October 6, 1917 (50 U. S. C. 1 *et seq.*), as amended, and the act of September 28, 1950 (Public Law 857, 81st Congress), and as President of the United States, it is hereby ordered as follows:

1. The Secretary of State and the Attorney General are hereby jointly designated as the officers authorized to conclude and give effect to agreements relating to the settlement of intercustodial conflicts involving enemy property made pursuant to the said act of September 28, 1950, and to exercise all powers incident thereto which are conferred by such act, including, without limitation, the powers to receive, transfer, release, or return property, interests therein, or proceeds thereof.

2. It is the policy of this order that the Secretary of State, with the concurrence of the Attorney General, shall perform all functions necessary or appropriate to give effect to any agreement made pursuant to the said act of September 28, 1950, with relation to the protection of American interests in property outside the United States, and that the Attorney General, with the concurrence of the Secretary of State, shall perform all functions necessary or appropriate to give effect to any such agreement with relation to property subject to the jurisdiction of the United States, and that all other functions relating to the effectuation of any such agreement shall be performed as may be agreed by the Secretary of State and the Attorney General. However, no action taken hereunder by either the Secretary of State or the Attorney General shall be considered to be invalid on the ground that under the provisions of this order such action was within the jurisdiction of the Secretary of State rather than the Attorney General, or vice versa, or that concurrence was not obtained, or that such action was not joint.

3. The Secretary of State and the Attorney General may each delegate to the other or to any other officer, person, or agency within his respective department such of his functions under this order as he may deem necessary.

4. Any money, property, or interest received as reimbursement by the United States by virtue of any agreement made pursuant to the said act of September 28, 1950, shall be administered and disposed of by the Attorney General as vested property pursuant to the said Trading With the Enemy Act, as amended. Any other money, property, or interest received by the Secretary of State or the Attorney General pursuant to any such agreement shall be administered and disposed of pursuant to the provisions of such agreement.

EXECUTIVE ORDER NO. 10254, OF JUNE 15, 1951

By virtue of the authority vested in me by the Constitution and the laws of the United States, including the Trading with the Enemy Act of October 6, 1917, 40 Stat. 411, as amended, the Philippine Property Act of 1946, 60 Stat. 418, as amended, section 1753 of the Revised Statutes, the Civil Service Act, 22 Stat. 403, and section 101 (b) of Reorganization Plan No. 1 of 1947, 61 Stat. 951, and as President of the

United States, and in effectuation of those provisions of the General Appropriation Act, 1951, relating to the Philippine Alien Property Administration, it is ordered as follows:

1. The Philippine Alien Property Administration, established by Executive Order No. 9818 of January 7, 1947, is hereby terminated. All authority, rights, privileges, powers, duties, and functions vested in such Administration or in the Philippine Alien Property Administrator or transferred or delegated thereto are hereby vested in or transferred or delegated to the Attorney General, as the case may be, and shall be administered by him or under his direction and control by such officers and agencies of the Department of Justice as he may designate.

2. All property or interests vested in or transferred to the Philippine Alien Property Administration or the Administrator thereof, and all proceeds thereof, which are held or administered by the Philippine Alien Property Administration or the Administrator thereof are hereby transferred to the Attorney General of the United States.

3. All personnel, records, files, furniture, funds, authorizations, equipment, and supplies of the Philippine Alien Property Administration are hereby transferred to the Department of Justice.

4. All necessary expenses incurred in the administration or operation of the functions, duties, authority, rights, privileges, and powers hereby vested in or transferred or delegated to the Attorney General shall be paid, to the extent permitted and in the manner prescribed by law, from funds or property or interests vested in or transferred to the Attorney General by or pursuant to the authority contained in this order, so as to prevent diminution of funds otherwise available for the War Claims Fund under section 39 of the Trading with the Enemy Act, as amended by section 12 of the act of July 3, 1948, 62 Stat. 1246.

This order shall become effective at the close of business in Washington, D. C., on June 29, 1951, and shall at that time supersede all prior Executive orders to the extent that they are in conflict with this order.

EXECUTIVE ORDER NO. 10348, OF APRIL 26, 1952

By virtue of the authority vested in me by the Constitution and laws of the United States, including the Trading with the Enemy Act of October 6, 1917 (40 Stat. 411), as amended, and as President of the United States, it is hereby ordered as follows:

Executive Order No. 8389 of April 10, 1940, as amended, and Executive Order No. 9989 of August 20, 1948, and all delegations, designations, regulations, rulings, instructions, and licenses issued under such orders are hereby continued in force according to their terms for the duration of the period of the national emergency proclaimed by Proclamation No. 2914 of December 16, 1950.

EXECUTIVE ORDER NO. 10587, OF JANUARY 13, 1955

By virtue of the authority vested in me by the Trading with the Enemy Act, as amended (50 U. S. C. App. 1 et seq.), and by section 301 of title 3 of the United States Code (65 Stat. 713), and as President of the United States, it is ordered as follows:

SECTION 1. The Jewish Restitution Successor Organization, a charitable membership organization incorporated under the laws of the State of New York, is hereby designated as successor in interest to deceased persons in accordance with and for the purposes of subsection (h) of section 32 of the Trading with the Enemy Act, as added by Public Law 626, approved August 23, 1954 (68 Stat. 767).

SEC. 2. Exclusive of the function vested in the President by the first sentence of the said subsection (h) of section 32 of the Trading with the Enemy Act, the Attorney General shall carry out the functions provided for in that subsection, including the powers, duties, authority and discretion thereby vested in or conferred upon the President; and functions under the said subsection are hereby delegated to the Attorney General, and the Attorney General is hereby designated thereunder, accordingly.

SEC. 3. The Attorney General may delegate to any officer and agency of the Department of Justice such of his functions under this order as he may deem necessary.

EXECUTIVE ORDER NO. 10644, OF NOVEMBER 7, 1955

By virtue of the authority vested in me by Title II of the International Claims Settlement Act of 1949, as added by Public Law 285, 84th Congress, approved August 9, 1955 (69 Stat. 562), and by section 301 of title 3 of the United States Code, and as President of the United States, it is ordered as follows:

SECTION 1. The Attorney General, and, as designated by the Attorney General for this purpose, any Assistant Attorney General are hereby designated and empowered to perform the functions conferred by the said Title II of the International Claims Settlement Act of 1949 upon the President, and the functions conferred by that title upon any designee of the President.

SEC. 2. The Attorney General is hereby designated as the officer in whom property shall vest under the said Title II.

SEC. 3. As used in this order, the term "functions" includes duties, powers, responsibilities, authority, and discretion, and the term "perform" may be construed to include "exercise".

[EXTRACT FROM REORGANIZATION PLAN NO. 1 OF 1947]

[House Doc. No. 230, 80th Cong., 1st Session]

* * * * * * *

SECTION 101. *Functions of the Alien Property Custodian.*—(a) Except as provided by subsection (b) of this section, all functions vested by law in the Alien Property Custodian or the Office of Alien Property Custodian are transferred to the Attorney General and shall be performed by him, or, subject to his direction and control, by such officers and agencies of the Department of Justice as he may designate.

(b) The functions vested by law in the Alien Property Custodian or the Office of Alien Property Custodian with respect to property or interests located in the Philippines or which were so located at the time

of vesting in or transfer to an officer or agency of the United States under the Trading with the Enemy Act, as amended, are transferred to the President and shall be performed by him or, subject to his direction and control, by such officers and agencies as he may designate.

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[EXTRACT FROM REORGANIZATION PLAN NO. 2 OF 1950]

[House Doc. No. 506, 81st Cong., 2d Session]

* * * * * * *

SECTION 1. *Transfer of functions to the Attorney General.*—(a) Except as otherwise provided in subsection (b) of this section, there are hereby transferred to the Attorney General all functions of all other officers of the Department of Justice and all functions of all agencies and employees of such Department.

(b) This section shall not apply to the functions vested by the Administrative Procedure Act (60 Stat. 237) in hearing examiners employed by the Department of Justice, nor to the functions of the Federal Prison Industries, Inc., of the Board of Directors and officers of the Federal Prison Industries, Inc., or of the Board of Parole.

SEC. 2. *Performance of functions of the Attorney General.*—The Attorney General may from time to time make such provisions as he shall deem appropriate authorizing the performance by any other officer, or by any agency or employee, of the Department of Justice of any function of the Attorney General, including any function transferred to the Attorney General by the provisions of this reorganization plan.

* * * * * * *

SEC. 6. *Incidental transfers.*—The Attorney General may from time to time effect such transfers within the Department of Justice of any of the records, property, personnel; and unexpended balances (available or to be made available) of appropriations, allocations, and other funds of such Department as he may deem necessary in order to carry out the provisions of this reorganization plan.

[EXTRACT FROM REORGANIZATION PLAN NO. 19 OF 1950]

[House Doc. No. 524, 81st Cong., 2d Session]

* * * * * * *

EMPLOYEES' COMPENSATION FUNCTIONS

SECTION 1. *Bureau of Employees' Compensation.*—The Bureau of Employees' Compensation of the Federal Security Agency, together with its functions, is transferred to the Department of Labor and shall be administered under the direction and supervision of the Secretary of Labor. The functions of the Federal Security Administrator, and of the Federal Security Agency, with respect to the Bureau of Em-

ployees' Compensation and with respect to employees' compensation (including workmen's compensation) are transferred to the Secretary of Labor * * *

* * * * * * *

SEC. 2. *Employees' Compensation Appeals Board.*—The Employees' Compensation Appeals Board of the Federal Security Agency, together with the functions thereof, is transferred to the Department of Labor. The functions of the Federal Security Administrator with respect to the Employees' Compensation Appeals Board are transferred to the Secretary of Labor. The Board shall continue to have authority to hear and, subject to applicable law and the rules and regulations of the Secretary of Labor, to make final decision on appeals taken from determinations and awards with respect to claims of employees of the Federal Government or of the District of Columbia

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[EXTRACT FROM REORGANIZATION PLAN NO. 1 OF 1953]

[House Doc. No. 102, 83d Cong., 1st Session]

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DEPARTMENT OF HEALTH, EDUCATION, AND WELFARE

SECTION 1. *Creation of Department; Secretary.*—There is hereby established an executive department, which shall be known as the Department of Health, Education, and Welfare (hereafter in this reorganization plan referred to as the Department). There shall be at the head of the Department a Secretary of Health, Education, and Welfare (hereafter in this reorganization plan referred to as the Secretary), who shall be appointed by the President by and with the advice and consent of the Senate, and who shall receive compensation at the rate now or hereafter prescribed by law for the heads of executive departments. The Department shall be administered under the supervision and direction of the Secretary.

* * * * * * *

SEC. 5. *Transfers to the Department.*—All functions of the Federal Security Administrator are hereby transferred to the Secretary. All agencies of the Federal Security Agency, together with their respective functions, personnel, property, records, and unexpended balances of appropriations, allocations, and other funds (available or to be made available), and all other functions, personnel, property, records, and unexpended balances of appropriations, allocations, and other funds (available or to be made available) of the Federal Security Agency are hereby transferred to the Department.

SEC. 6. *Performance of functions of the Secretary.*—The Secretary may from time to time make such provisions as the Secretary deems appropriate authorizing the performance of any of the functions of the Secretary by any other officer, or by any agency or employee, of the Department.

* * * * * * *

SEC. 8. *Abolitions.*—The Federal Security Agency (exclusive of the agencies thereof transferred by sec. 5 of this reorganization plan), the offices of Federal Security Administrator and Assistant Federal Security Administrator created by Reorganization Plan No. I (53 Stat. 1423), the two offices of assistant heads of the Federal Security Agency created by Reorganization Plan No. 2 of 1946 (60 Stat. 1095), and the office of Commissioner for Social Security created by section 701 of the Social Security Act, as amended (64 Stat. 558), are hereby abolished. The Secretary shall make such provisions as may be necessary in order to wind up any outstanding affairs of the Agency and offices abolished by this section which are not otherwise provided for in this reorganization plan.

REORGANIZATION PLAN NO. 1 OF 1954

[House Doc. No. 381, 83d Cong., 2d sess.]

FOREIGN CLAIMS SETTLEMENT COMMISSION OF THE UNITED STATES

SECTION 1. *Establishment of Commission.*—There is hereby established the Foreign Claims Settlement Commission of the United States, hereinafter referred to as the Commission. The Commission shall be composed of three members, who shall each be appointed by the President by and with the advice and consent of the Senate, hold office during the pleasure of the President, and receive compensation at the rate of $15,000 per annum. The President shall from time to time designate one of the members of the Commission as the Chairman of the Commission, hereinafter referred to as the Chairman. Two members of the Commission shall constitute a quorum for the transaction of the business of the Commission.

SEC. 2. *Transfer of functions.*—(a) All functions of the War Claims Commission and of the members, officers, and employees thereof are hereby transferred to the Foreign Claims Settlement Commission of the United States.

(b) All functions of the International Claims Commission of the United States (hereinafter referred to as the International Claims Commission) and of the members, officers, and employees thereof are hereby transferred to the Foreign Claims Settlement Commission of the United States.

(c) The functions of the Secretary of State and of the Department of State with respect to the International Claims Commission and its affairs, exclusive of the functions of the said Secretary and Department under sections 3 (c), 4 (b), and 5, and the first sentence of section 8 (d), of the International Claims Settlement Act of 1949, 64 Stat. 12, as amended, are hereby transferred to the Commission.

(d) The functions of the Commissioner provided for in the Joint Resolution approved August 4, 1939, ch. 421, 53 Stat. 1199, together with the functions of the Secretary of State under section 2 thereof, are hereby transferred to the Commission.

SEC. 3. *Certain functions of Chairman.*—There are hereby vested in the Chairman all functions of the Commission with respect to the internal management of the affairs of the Commission, including but not limited to functions with respect to: (a) the appointment of per-

sonnel employed under the Commission, (b) the direction of employees of the Commission and the supervision of their official activities, (c) the distribution of business among employees and organizational units under the Commission, (d) the preparation of budget estimates, and (e) the use and expenditure of funds of the Commission available for expenses of administration.

SEC. 4. *Abolitions.*—(a) The War Claims Commission, provided for in the War Claims Act of 1948, 62 Stat. 1240, as amended, and the International Claims Commission, provided for in the International Claims Settlement Act of 1949, as amended, including the offices of the members of each of the said commissions, and the office of Commissioner provided for in the aforesaid Joint Resolution of August 4, 1939, are hereby abolished.

(b) The functions of the Secretary of State under the third and fourth sentences of section 3 (c) of the International Claims Settlement Act of 1949, as amended, are hereby abolished.

SEC. 5. *Authorization to delegate.*—The Commission is hereby authorized to delegate any of its functions to one or more persons designated by the Commission from among the members of the Commission and the officers and employees serving under the Commission.

SEC. 6. *Transitional provisions.*—(a) Any person who is a member or acting member of the War Claims Commission or of the International Claims Commission immediately prior to the taking effect of the provisions of this reorganization plan may be designated by the President as an acting member of the Foreign Claims Settlement Commission of the United States in respect of an office of member the initial appointment to which has not then been made under section 1 of this reorganization plan. Each such acting member of the said Foreign Claims Settlement Commission shall perform the duties and receive the compensation of member. Unless sooner terminated, the tenure of any acting member designated hereunder shall terminate when the office of member concerned is filled in pursuance of section 1 hereof, or 120 days after the effective date of this reorganization plan, whichever is earlier.

(b) The Chairman shall make such provisions as may be necessary with respect to winding up any affairs of the agencies abolished by the provisions of this reorganization plan not otherwise provided for herein.

(c) So much of the personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, held, used, available, or to be made available, in connection with the functions transferred by section 2 of this reorganization plan as the Director of the Bureau of the Budget shall determine shall be transferred to the Commission at such time or times as the said Director shall direct.

(d) Such further measures and dispositions as the Director of the Bureau of the Budget shall deem to be necessary in order to effectuate the transfers provided for in subsection (c) of this section shall be carried out in such manner as he shall direct and by such agencies as he shall designate.

SEC. 7. *Effective date.*—The provisions of this reorganization plan shall take effect on the date determined under section 6 (a) of the Reorganization Act of 1949, as amended, or the first day of July, 1954, whichever is later.

Extract from the

AGREEMENT ON REPARATION FROM GERMANY,

On the establishment of an Inter-Allied Reparation Agency and on the restitution of monetary gold.

[ENTERED INTO FORCE JANUARY 24, 1946]

[TIAS 1655]

THE GOVERNMENTS OF ALBANIA, THE UNITED STATES OF AMERICA, AUSTRALIA, BELGIUM, CANADA, DENMARK, EGYPT, FRANCE, THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND, GREECE, INDIA, LUXEMBOURG, NORWAY, NEW-ZEALAND, THE NETHERLANDS, CZECHOSLOVAKIA, THE UNION OF SOUTH AFRICA AND YUGOSLAVIA, in order to obtain an equitable distribution among themselves of the total assets which, in accordance with the provisions of this Agreement and the provisions agreed upon at Potsdam on 1. August 1945 between the Governments of the United States of America, the United Kingdom of Great Britain and Northern Ireland and the Union of Soviet Socialist Republics, are or may be declared to be available as reparation from Germany (hereinafter referred to as German reparation), in order to establish an Inter-Allied Reparation Agency, and to settle an equitable procedure for the restitution of monetary gold,

HAVE AGREED as follows:

PART I.

German reparation.

ARTICLE 1.

Shares in Reparation.

A. German reparation (exclusive of the funds to be allocated under Article 8 of Part I of this Agreement), shall be divided into the following categories:

Category A, which shall include all forms of German reparation except those included in Category *B;*

Category B, which shall include industrial and other capital equipment removed from Germany, and merchant ships and inland water transport.

B. Each Signatory Government shall be entitled to the percentage share of the total value of Category A and the percentage share of the total value of Category B set out for that Government in the Table of Shares set forth below:

TABLE OF SHARES.

Country.	Category A.	Category B.
Albania	.05	.35
United States of America	28.00	11.80
Australia	.70	.95
Belgium	2.70	4.50
Canada	3.50	1.50
Denmark	.25	.35
Egypt	.05	.20
France	16.00	22.80
United Kingdom	28.00	27.80
Greece	2.70	4.35
India	2.00	2.90
Luxembourg	.15	.40
Norway	1.30	1.90
New Zealand	.40	.60
Netherlands	3.90	5.60
Czechoslovakia	3.00	4.30
Union of South Africa [1]	.70	.10
Yugoslavia	6.60	9.60
Total	100.00	100.00

[1] The Government of the Union of South Africa has undertaken to waive its claims to the extent necessary to reduce its percentage share of category B to the figure of 0.1 per cent but is entitled, in disposing of German enemy assets within its jurisdiction, to charge the net value of such assets against its percentage share of category A and a percentage share under category B of 1.0 per cent.

C. Subject to the provisions of paragraph D below, each Signatory Government shall be entitled to receive its share of merchant ships determined in accordance with Article 5 of Part I of this Agreement, provided that its receipts of merchant ships do not exceed in value its share in Category B as a whole.

Subject to the provisions of paragraph D below, each Signatory Government shall also be entitled to its Category A percentage share in German assets in countries which remained neutral in the war against Germany.

The distribution among the Signatory Governments of forms of German reparation other than merchant ships, inland water transport and German assets in countries which remained neutral in the war against Germany shall be guided by the principles set forth in Article 4 of Part I of this Agreement.

D. If a Signatory Government receives more than its percentage share of certain types of assets in either Category A or Category B, its receipts of other types of assets in that Category shall be reduced so as to ensure that it shall not receive more than its share in that Category as a whole.

E. No Signatory Government shall receive more than its percentage share of either Category A or Category B as a whole by surrendering any part of its percentage share of the other Category, except that with respect to German enemy assets within its own jurisdiction, any Signatory Government shall be permitted to charge any excess of such assets over its Category A percentage share of total German enemy assets within the jurisdiction of the Signatory Governments either to its receipts in Category A or to its receipts in Category B or in part to each Category.

F. The Inter-Allied Reparation Agency, to be established in accordance with Part II of this Agreement, shall charge the reparation account of each Signatory Government for the German assets within that Government's jurisdiction over a period of five years. The charges at the date of the entry into force of this Agreement shall be not less than 20 per cent of the net value of such assets (as defined in Article 6 of Part I of this Agreement) as then estimated, at the beginning of the second year thereafter not less than 25 per cent of the balance as then estimated, at the beginning of the third year not less than 33 1/3 per cent of the balance as then estimated, at the beginning of the fourth year not less than 50 per cent of the balance as then estimated, at the beginning of the fifth year not less than 90 per cent of the balance as then estimated, and at the end of the fifth year the entire remainder of the total amount actually realized.

G. The following exceptions to paragraphs D and E above shall apply in the case of a Signatory Government whose share in Category B is less than its share in Category A:

(i) Receipts of merchant ships by any such Government shall not reduce its percentage share in other types of assets in Category B, except to the extent that such receipts exceed the value obtained when that Government's Category A percentage is applied to the total value of merchant ships.

(ii) Any excess of German assets within the jurisdiction of such Government over its Category A percentage share of the total of German assets within the jurisdiction of Signatory Government as a whole shall be charged first to the additional share in Category B to which that Government would be entitled if its share in Category B were determined by applying its Category A percentage to the forms of German reparation in Category B.

H. If any Signatory Government renounces its shares or part of its shares in German reparation as set out in the above Table of Shares, or if it withdraws from the Inter-Allied Reparation Agency at a time when all or part of its shares in German reparation remain unsatisfied, the shares or part thereof thus renounced or remaining shall be distributed rateably among the other Signatory Governments.

ARTICLE 2.

Settlement of Claims against Germany.

A. The Signatory Governments agree among themselves that their respective shares of reparation, as determined by the present Agreement, shall be regarded by each of them as covering all its claims and those of its nationals against the former German Government and its Agencies, of a governmental or private nature, arising out of the war (which are not otherwise provided for), including costs of German occupation, credits acquired during occupation on clearing accounts and claims again the Reichskreditkassen.

B. The provisions of paragraph A above are without prejudice to:

(i) the determination at the proper time of the forms, duration or total amount of reparation to be made by Germany;

(ii) the right which each Signatory Government may have with respect to the final settlement of German reparation; and

(iii) any political, territorial or other demands which any Signatory Government may put forward with respect to the peace settlement with Germany.

C. Notwithstanding anything in the provisions of paragraph A above, the present Agreement shall not be considered as affecting:

(i) the obligation of the appropriate authorities in Germany to secure at a future date the discharge of claims against Germany and German nationals arising out of contracts and other obligations entered into, and rights acquired, before the existence of a state of war between Germany and the Signatory Government concerned or before the occupation of its territory by Germany, whichever was earlier;

(ii) the claims of Social Insurance Agencies of the Signatory Governments or the claims of their nationals against the Social Insurance Agencies of the former German Government; and

(iii) banknotes of the Reichsbank and the Rentenbank, it being understood that their realization shall not have the result of reducing improperly the amount of reparation and shall not be effected without the approval of the Control Council for Germany.

D. Notwithstanding the provisions of Paragraph A of this Article, the Signatory Governments agree that, so far as they are concerned, the Czechoslovak Government will be entitled to draw upon the Giro account of the National Bank of Czechoslovakia at the Reichsbank, should such action be decided upon by the Czechoslovak Government and approved by the Control Council for Germany, in connection with the movement from Czechoslovakia to Germany of former Czechoslovak nationals.

Article 3.

Waiver of Claims Regarding Property Allocated as Reparation.

Each of the Signatory Governments agrees that it will not assert, initiate actions in international tribunals in respect of, or give diplomatic support to claims on behalf of itself or those persons entitled to its protection against any other Signatory Government or its nationals in respect of property received by that Government as reparation with the approval of the Control Council for Germany.

Article 4.

General Principles for the Allocation of Industrial and other Capital Equipment.

A. No Signatory Government shall request the allocation to it as reparation of any industrial or other capital equipment removed from Germany except for use in its own territory or for use by its own nationals outside its own territory.

B. In submitting requests to the Inter-Allied Reparation Agency, the Signatory Governments should endeavour to submit comprehensive programs of requests for related groups of items, rather than requests for isolated items or small groups of items. It is recognized that the work of the Secretariat of the Agency will be more effective,

the more comprehensive the programs which Signatory Governments submit to it.

C. In the allocation by the Inter-Allied Reparation Agency of items declared available for reparation (other than merchant ships, inland water transport and German assets in countries which remained neutral in the war against Germany), the following general principles shall serve as guides:

(i) Any item or related group of items in which a claimant country has a substantial prewar financial interest shall be allocated to that country if it so desires. Where two or more claimants have such substantial interests in a particular item or group of items, the criteria stated below shall guide the allocation:

(ii) If the allocation between competing claimants is not determined by paragraph (i), attention shall be given, among other relevant factors, to the following considerations:

a. The urgency of each claimant country's needs for the items or item to rehabilitate, reconstruct or restore to full activity the claimant country's economy;

b. The extent to which the item or items would replace property which was destroyed, damaged or looted in the war, or requires replacement because of excessive wear in war production, and which is important to the claimant country's economy;

c. The relation of the item or items to the general pattern of the claimant country's prewar economic life and to programs for its postwar economic adjustment or development;

d. The requirements of countries whose reparation shares are small but which are in need of certain specific items or categories of items.

(iii) In making allocations a reasonable balance shall be maintained among the rates at which the reparation shares of the several claimant Governments are satisfied, subject to such temporary exceptions as are justified by the considerations under paragraph (ii) (*a*) above.

Article 5.

General Principles for the Allocation of Merchant Ships and Inland Water Transport.

A. (i) German merchant ships available for distribution as reparation among the Signatory Governments shall be distributed among them in proportion to the respective over-all losses of merchant shipping, on a gross tonnage basis, of the Signatory Governments and their nationals through acts of war. It is recognized that transfers of merchant ships by the United Kingdom and United States Governments to other Governments are subject to such final approvals by the legislatures of the United Kingdom and United States of America as may be required.

(ii) A special committee, composed of representatives of the Signatory Governments, shall be appointed by the assembly of the Inter-Allied Reparation Agency to make recommendations concerning the determination of such losses and the allocation of German merchant ships available for distribution.

(iii) The value of German merchant ships for reparation accounting purposes shall be the value determined by the Tri-partite Merchant Marine Commission in terms of 1938 prices in Germany plus 15 per cent, with an allowance for depreciation.

B. Recognizing that some countries have special need for inland water transport, the distribution of inland water transport shall be dealt with by a special committee appointed by the Assembly of the Inter-Allied Reparation Agency in the event that inland water transport becomes available at a future time as reparation for the Signatory Governments.

The valuation of inland water transport will be made on the basis adopted for the valuation of merchant ships or on an equitable basis in relation to that adopted for merchant ships.

Article 6.

German External Assets.

A. Each Signatory Government shall, under such procedures as it may choose, hold or dispose of German enemy assets within its jurisdiction in manners designed to preclude their return to German ownership or control and shall charge against its reparation share such assets (net of accrued taxes, liens, expenses of administration, other *in rem* charges against specific items and legitimate contract claims against the German former owners of such assets).

B. The Signatory Governments shall give to the Inter-Allied Reparation Agency all information for which it asks as to the value of such assets and the amounts realized from time to time by their liquidation.

C. German assets in those countries which remained neutral in the war against Germany shall be removed from German ownership or control and liquidated or disposed of in accordance with the authority of France, the United Kingdom and the United States of America, pursuant to arrangements to be negotiated with the neutrals by these countries. The net proceeds of liquidation or disposition shall be made available to the Inter-Allied Reparation Agency for distribution on reparation account.

D. In applying the provisions of paragraph A above, assets which were the property of a country which is a member of the United Nations or its nationals who were not nationals of Germany at the time of the occupation or annexation of this country by Germany, or of its entry into war, shall not be charged to its reparation account. It is understood that this provision in no way prejudges any questions which may arise as regards assets which were not the property of a national of the country concerned at the time of the latter's occupation or annexation by Germany or of its entry into war.

E. The German enemy assets to be charged against reparation shares shall include assets which are in reality German enemy assets, despite the fact that the nominal owner of such assets is not a German enemy.

Each Signatory Government shall enact legislation or take other appropriate steps, if it has not already done so, to render null and void all transfers made, after the occupation of its territory or its entry into war, for the fraudulent purpose of cloaking German enemy interests, and thus saving them harmless from the effect of control measures regarding German enemy interests.

F. The Assembly of the Inter-Allied Reparation Agency shall set up a Committee of Experts in matters of enemy property custodian-

ship in order to overcome practical difficulties of law and interpretation which may arise. The Committee should in particular guard against schemes which might result in effecting fictitious or other transactions designed to favour enemy interests, or to reduce improperly the amount of assets which might be allocated to reparation.

ARTICLE 7.

Captured Supplies.

The value of supplies and other materials susceptible of civilian use captured from the German Armed Forces in areas outside Germany and delivered to Signatory Governments shall be charged against their reparation shares in so far as such supplies and materials have not been or are not, in the future either paid for or delivered under arrangements precluding any charge.

It is recognized that transfers of such supplies and materials by the United Kingdom and United States Governments to other Governments are agreed to be subject to such final approval by the legislature of the United Kingdom or the United States of America as may be required.

ARTICLE 8.

Allocation of a Reparation Share to Nonrepatriable Victims of German Action.

In recognition of the fact that large numbers of persons have suffered heavily at the hands of the Nazis and now stand in dire need of aid to promote their rehabilitation but will be unable to claim the assistance of any Government receiving reparation from Germany, the Governments of the United States of America, France, the United Kingdom, Czechoslovakia and Yugoslavia, in consultation with the Inter-Governmental Committee on Refugees, shall as soon as possible work out in common agreement a plan on the following general lines:

A. A share of reparation consisting of all the non-monetary gold found by the Allied Armed Forces in Germany and in addition a sum not exceeding 25 million dollars shall be allocated for the rehabilitation and resettlement of non-repatriable victims of German action.

B. The sum of 25 million dollars shall be met from a portion of the proceeds of German assets in neutral countries which are available for reparation.

C. Governments of neutral countries shall be requested to make available for this purpose (in addition to the sum of 25 million dollars) assets in such countries of victims of Nazi action who have since died and left no heirs.

D. The persons eligible for aid under the plan in question shall be restricted to true victims of Nazi persecution and to their immediate families and dependents, in the following classes:

(i) Refugees from Nazi Germany or Austria who require aid and cannot be returned to their countries within a reasonable time because of prevailing conditions;

(ii) German and Austrian nationals now resident in Germany or Austria in exceptional cases in which it is reasonable on grounds of

humanity to assist such persons to emigrate and providing they emigrate to other countries within a reasonable period;

(iii) Nationals of countries formerly occupied by the Germans who cannot be repatriated or are not in a position to be repatriated within a reasonable time. In order to concentrate aid on the most needy and deserving refugees and to exclude persons whose loyalty to the United Nations is or was doubtful, aid shall be restricted to nationals or former nationals of previously occupied countries who were victims of German concentration camps or of concentration camps established by regimes under Nazi influence but not including persons who have been confined only in prisoners of war camps.

E. The sums made available under paragraphs A and B above shall be administered by the Inter-Governmental Committee on Refugees or by a United Nations Agency to which appropriate functions of the Inter-Governmental Committee may in the future be transferred. The sums made available under paragraph C above shall be administered for the general purposes referred to in this Article under a program of administration to be formulated by the five Governments named above.

F. The non-monetary gold found in Germany shall be placed at the disposal of the Inter-Governmental Committee on Refugees as soon as a plan has been worked out as provided above.

G. The Inter-Governmental Committee on Refugees shall have power to carry out the purposes of the fund through appropriate public and private field organizations.

H. The fund shall be used, not for the compensation of individual victims, but to further the rehabilitation or resettlement of persons in the eligible classes.

I. Nothing in this Article shall be considered to prejudice the claims which individual refugees may have against a future German Government, except to the amount of the benefits that such refugees may have received from the sources referred to in paragraph A and C above.

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PART IV.

Entry into force and signature.

ARTICLE 1.

Entry into force.

This Agreement shall be open for signature on behalf of any Government represented at the Paris Conference on Reparation.

As soon as it has been signed on behalf of Governments collectively entitled to not less than 80 p. 100 of the aggregate of shares in Category A of German reparation, it shall come into force[1] among such Signatory Governments.

The Agreement shall thereafter be in force among such Governments and those Governments on whose behalf it is subsequently signed.

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[1] The agreement came into force on Jan. 24, 1946.

ARTICLE 2.

Signature.

The signature of each contracting Government shall be deemed to mean that the effect of the present Agreement extends to the colonies and overseas territories of such Government, and to territories under its protection or suzerainety or over which it at present exercises a mandate.

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[EXTRACT FROM THE CONVENTION ON THE SETTLEMENT OF MATTERS ARISING OUT OF THE WAR AND THE OCCUPATION, AS AMENDED]

[S. Doc. No. 11, 84th Cong., 1st Sess.]

The UNITED STATES OF AMERICA, the UNITED KINGDOM OF GREAT BRITAIN and NORTHERN IRELAND and the FRENCH REPUBLIC (hereinafter referred to as "the Three Powers"), of the one part, and the FEDERAL REPUBLIC OF GERMANY, of the other part, AGREE AS FOLLOWS:

* * * * * * *

CHAPTER SIX—REPARATION

ARTICLE 1

1. The problem of reparation shall be settled by the peace treaty between Germany and its former enemies or by earlier agreements concerning this matter. The Three Powers undertake that they will at no time assert any claim for reparation against the current production of the Federal Republic.

2. Pending the final settlement envisaged in paragraph 1 of this Article, the following provisions shall apply.

* * * * * * *

ARTICLE 3

1. The Federal Republic shall in the future raise no objections against the measures which have been, or will be, carried out with regard to German external assets or other property, seized for the purpose of reparation or restitution, or as a result of the state of war, or on the basis of agreements concluded, or to be concluded, by the Three Powers with other Allied countries, neutral countries or former allies of Germany.

2. The Federal Republic shall abide by such provisions regulating German external assets in Austria as are set forth in any agreement to which the Powers now in occupation of Austria are parties or as may be contained in the future State Treaty with Austria.

3. No claim or action shall be admissible against persons who shall have acquired or transferred title to property on the basis of the measures referred to in paragraphs 1 and 2 of this Article, or against international organizations, foreign governments or persons who have acted upon instructions of such organizations or governments.

ARTICLE 4

1. Where German external assets have not been transferred or liquidated, or where no disposition has been made in respect of the proceeds of their liquidation, the Federal Republic may negotiate agreements regarding them with all countries which have been at war with Germany since 1 September 1939 but are not members of the Inter-Allied Reparation Agency (IARA).

2. Moreover, the Federal Republic may negotiate agreements with the member countries of IARA, provided such agreements relate only to

(a) property of the types which member countries of the IARA may, under Part III of the IARA accounting rules, voluntarily exclude from the charge to be made under Part II of the rules;

(b) securities of German issue expressed in Reichsmarks;

(c) pensions;

(d) a final date for sequestration of German property in countries in which such a date has not yet been determined.

3. Regarding property taken as German assets in Portugal, Spain, Sweden and Switzerland, with respect to which agreements concluded by the Three Powers are, or will be, in force, the Federal Republic may negotiate with those countries arrangements in implementation of such agreements concerning the nature and amount of compensation to be paid to former German owners of assets in those countries. The Three Powers shall have the right to participate in such negotiations.

4. Apart from the questions referred to in the preceding paragraphs of this Article, the Federal Republic may, after due notification to the Three Powers, negotiate with any country agreements on other questions concerning German external assets unless the Three Powers specifically object thereto.

ARTICLE 5

The Federal Republic shall ensure that the former owners of property seized pursuant to the measures referred to in Articles 2 and 3 of this Chapter shall be compensated.

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CHAPTER NINE—CLAIMS AGAINST FOREIGN NATIONS OR NATIONALS

ARTICLE 1

Without prejudice to the terms of a peace settlement with Germany, German nationals who are subject to the jurisdiction of the Federal Republic shall not assert against countries which have signed or acceded to the United Nations Declaration of 1 January 1942, or have been at war with Germany, or are specified in Article 5 of Chapter Five of the present Convention, or against the nationals of such countries, claims of any description arising out of actions taken or authorized by the Governments of these countries between 1 September 1939 and 5 June 1945 because of the existence of a state of war in Europe, nor shall such claims be asserted in any court of the Federal Republic by any person.

ARTICLE 2

Without prejudice to the terms of a peace settlement with Germany, the Federal Republic confirms that no governmental claims on behalf of Germany arising out of actions taken or authorized by the Governments of the countries referred to in Article 1 of this Chapter between 1 September 1939 and 5 June 1945 because of the existence of a state of war in Europe may be asserted prior to the negotiation of the peace settlement.

ARTICLE 3

1. The provisions of this Article are applicable during the period until the entry into force of a peace settlement with Germany.

2. The Federal Republic recognizes that no claims of any kind arising out of acts or omissions of the Three Powers or any one of them, or of organizations or persons who have acted on their behalf or under their authority, which took place in respect of Germany, German nationals or German property, or in Germany, between 5 June 1945 and the entry into force of the present Convention, may be asserted by the Federal Republic or by persons subject to its jurisdiction against the Three Powers or any one of them or against organizations or persons who have acted on their behalf or under their authority.

3. The Federal Republic assumes responsibility for the decision and satisfaction of claims for compensation for occupation damages which were sustained between 1 August 1945 and the entry into force of the present Convention and for which compensation is payable under the provisions of Allied High Commission Law No. 47, as amended by Allied High Commission Law No. 79. The Federal Republic will determine which of the other claims referred to in paragraph 2 of this Article, insofar as they arose in the Federal territory, should appropriately be satisfied and will take such measures as are necessary for the determination and satisfaction of such claims.

4. The provisions of this Article shall not apply to claims arising under contracts providing for payments from national funds of any of the Three Powers.

5. The Federal Government shall carry out all decisions taken with regard to claims specified in paragraph 3 of this Article by the authorities of the Three Powers or any one of them before the entry into force of the present Convention unless such decisions have already been carried out.

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CHAPTER TEN—FOREIGN INTERESTS IN GERMANY

ARTICLE 1

1. Insofar as this has not already been done, the Federal Republic will take all steps necessary to ensure that the nations, persons, and companies referred to in paragraph 3 of this Article shall be able to secure the return of their property in its present condition, and the restoration of their rights and interests in the Federal territory to the extent to which such property, rights or interests suffered discrimina-

tory treatment. The property, rights and interests of the nations, persons and companies referred to in paragraph 3 shall be freed by the Federal Republic from all encumbrances and charges of any kind to which they may have become subject as a result of discriminatory treatment. No costs shall be imposed either in connection with the return or restoration or with the removal of encumbrances or charges. Equitable conditions may, however, be imposed to prevent the unjust enrichment of any nation, person or company referred to in paragraph 3.

2. On the entry into force of the present Convention, the Federal Republic shall establish, and give adequate publicity to, the procedure described in the Annex to this Chapter for the filing and consideration of claims based on the provisions of this Article and for the satisfaction of awards based on such claims. Such claims shall be filed within twelve months from the establishment of such procedure. The Federal Republic shall also make available, so far as possible, all information concerning the administration by custodians of property, rights or interests to any interested party who may request it.

3. The following shall be entitled to claim under the provisions of this Article:

(a) United Nations and their nationals,

(b) the successors of such nationals, and

(c) companies organized under German law in which United Nations nationals own participation,

provided that such nationals or, except in the case of direct successors by inheritance or testamentary disposition, their successors were United Nations nationals at the date of the discriminatory treatment.

4. The term "discriminatory treatment" as used in this Article shall mean action of all kinds applied between 1 September 1939 and 8 May 1945 to any property, rights or interests, as a result of any exceptional measures which were not applicable generally to all non-German property, rights or interests, and giving rise to prejudice, deprivation or impairment without the free consent of the interested parties and without adequate compensation. Anything done or omitted under the German Ordinance on the Treatment of Enemy Properties of 15 January 1940 or any amendment thereto, or any other regulations having a similar purpose, may be held to amount to discriminatory treatment, even though within the scope of such Ordinance, amendments or regulations, where it appears that

(a) injury to foreign property, rights or interests resulted therefrom; and

(b) the injury inflicted could have been avoided without infringing such Ordinance, amendments or regulations.

5. The provisions of this Article are not applicable to claims which are dealt with under Chapters Three and Four of the present Convention.

6. The provisions of this Article are not intended to cover compensation for loss or damage to property, rights or interests due to discriminatory treatment or resulting indirectly or directly from the war by any other means, but shall not affect the right of any of the United Nations to advance during negotiation for a peace settlement any claim for compensation of this nature with respect to its own or its nationals' property, rights or interests.

ARTICLE 2

Insofar as they affect foreign creditors of German debtors, the Federal laws on periods of limitation (including preclusion and prescription) of 28 December 1950 and 30 March 1951 (Gesetz ueber den Ablauf der durch Kriegs- oder Nachkriegsvorschriften gehemmten Fristen and Gestz zur Ergaenzung des Gesetzes ueber den Ablauf der durch Kriegs- oder Nachkriegsvorschriften gehemmten Fristen (Bundesgesetzblatt 1950, Seite 821 and 1951, Teil I, Seite 213), together with Allied High Commission Law No. 67 on the same subject, shall be maintained in force. This legislation shall be reviewed by the Federal Republic in agreement with the other Signatory States on the basis of the provisions of the Agreement on German External Debts, concluded in London on 27 February 1953, insofar as this legislation involves claims dealt with in that Agreement.

ARTICLE 3

Without prejudice to the terms of the final peace settlement with Germany, the United Nations and their nationals shall enjoy, on the same basis as German nationals residing in the Federal territory, such compensation for war damage relating to property located in the Federal territory as may be provided by the Federal Republic or any of its Länder, but not Integration Aid (Eingliederungshilfe) or Housing Aid (Wohnraumhilfe).

ARTICLE 4

The Federal Republic reaffirms that under German law the state of war shall not in itself be regarded as affecting obligations to pay pecuniary debts arising out of obligations and contracts which existed, and rights which were acquired, before the commencement of the state of war.

ARTICLE 5

Any United Nations national, or the successor of such a national who is also a United Nations national, shall have the right to institute, within one year from the entry into force of the present Convention, an action for the revision of any judgment delivered by a German Court between 1 September 1939 and 8 May 1945 in any proceeding in which such national was a party and was physically, morally or legally unable to make adequate presentation of his case.

ARTICLE 6

1. Pending a final settlement of claims against Germany arising out of the war, the persons defined in paragraph 2 of this Article, and their property, shall be exempt from any exceptional taxes, levies or imposts, the incidence of which is in fact on property, imposed for the specific purpose of meeting charges arising out of the war or out of reparation or restitution to any of the United Nations.

2. Where any such tax, levy or impost is levied only partly for the purposes described in paragraph 1 of this Article, the exemption to be granted shall in principle be proportionate to the part of such taxes, levies or imposts imposed for these purposes. In the particular

cases of the levies prescribed by the legislation of the Bizonal Economic Council and by the corresponding legislation of the Länder of Rhineland—Palatinate, Baden and Wuerttemberg-Hohenzollern, concerning Immediate Aid (Soforthilfe) and by the Law on Equalization of Burdens of 14 August 1952 (Bundesgesetzblatt Teil I Seite 446), the persons and property described in the following provisions of this Article shall be exempted, to the extent provided, from payments falling due in the six-year period from 1 April 1949 to 31 March 1955 as Immediate Aid levies, and as the property levy under the Equalization of Burdens:

(a) natural persons who were nationals of any of the United Nations on the currency reform date (21 June 1948), and companies, associations of persons and trusts (Koerperschaften, Personenvereinigungen und Vermoegensmassen), which are independently liable for taxation under German law, organized under the laws of one of the United Nations, shall, if subject to unlimited tax liability, be exempted in respect of all property owned by them both on 21 June 1948 and on 8 May 1945 or, if subject to limited tax liability, in respect of all property owned by them in the Federal Republic or Berlin (West). Citizens of any territorial entity or nation referred to in sub-paragraph (c) of Article 1 of Allied High Commission Law No. 54 shall enjoy the same exemption if they had the nationality of any of the United Nations at any time between 1 September 1939 and 21 June 1948;

(b) companies organized under German law, which are independently liable for taxation, in which the natural persons or companies, associations of persons or trusts described in sub-paragraph (a) of this paragraph owned on 21 June 1948 and on 8 May 1945, directly or through the medium of other companies, a shareholding interest of at least 85 per cent shall be exempted in proportion to such shareholding interest;

(c) natural persons who do not qualify for exemption under sub-paragraph (a) of this paragraph and who claim or have claimed restitution or compensation pursuant to the legislation referred to in sub-paragraph (a) of paragraph 1 of Article 1 of Chapter Three of the present Convention shall be exempted on the first DM150,000 in value or amount of property of any kind which has been or will be transferred to them under orders, decisions or recorded agreements pursuant to such legislation which would be taxable under the provisions concerning Immediate Aid levies or the property levy under the Equalization of Burdens;

(d) the exemptions prescribed in sub-paragraphs (a) to (c) inclusive of this paragraph shall not become inoperative on the ground that the property concerned has devolved upon other persons on or after 21 June 1948.

3. For the purposes of sub-paragraph (a) of paragraph 2 of this Article, property which the owner on 21 June 1948 did not own on 8 May 1945 shall be deemed to have been owned by him on 8 May 1945 if

(a) the property was owned on 8 May 1945 by a person (of any nationality), from whom he acquired it through succession on death (by one or a series of inheritances or testamentary dispositions); or

(b) he acquired the property after 8 May 1945 in exchange for other property owned by him on that date (for example, through purchase); or

(c) the property concerned is restituted property of any kind, without limitation as to the value or amount, referred to in sub-paragraph (c) of paragraph 2 of this Article.

4. For the purposes of sub-paragraph (b) of paragraph 2 of this Article, the provisions of paragraph 3 of this Article shall be applicable *mutatis mutandis*.

5. Where payments made under the provisions of the Immediate Aid by natural persons, companies, associations of persons and trusts entitled to exemption under paragraph 2 of this Article exceed amounts of the property levy falling due for the same period taking into account the provisions of paragraph 2, the overpayment shall, not later than three months after the effective date of the notice of assessment issued by the German tax office concerning the property levy, be either refunded or set off against liabilities due for payment or which become due within three months thereafter.

6. In cases in which natural persons, companies, associations of persons or trusts enjoy exemption from the property levy by virtue of this Article, the annual amount to be paid in respect of the property levy for the period after the expiration of the exemption period shall not, either because of this exemption or because of the non-payment of the property levy or the Immediate Aid levy, be higher than the annual amount which would be payable by non-exempted natural persons, companies, associations of persons or trusts who have paid the Immediate Aid levy in full. If in computing the property levy the Immediate Aid levy is to be set off in the manner proposed in the draft law submitted to the Bundestag (Bundestag Document No. 3300), that is, by deduction of the Immediate Aid levy from the total liability for the property levy, then in cases where the Immediate Aid levy has not been imposed, three times the basic annual payment under the property levy is to be deducted from the total liability; the basic annual payment shall for this purpose be the amount resulting from the application of the annual contribution rates to the total liability.

7. In computing the liability for the purposes of any other levy under the Equalization of Burdens Law, natural persons, companies, associations of persons and trusts enjoying the exemptions under this Article shall be treated as though they had paid the full amount of property levy.

8. In cases under sub-paragraph (b) of paragraph 2 of this Article both the company, and any shareholder who believes the company should be exempted with respect to his participation, shall be entitled to all legal remedies available.

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ARTICLE 10

If the Federal Republic concludes with any other Power, on matters within the scope of Articles 1 to 9 inclusive of this Chapter, arrangements more favourable to such other Power than the corresponding provisions of those Articles, the benefits of such new arrangements shall automatically be extended to all Powers benefiting from the corresponding provisions of those Articles.

ARTICLE 11

In the expectation that such a policy will be applied by such Nations toward the Federal Republic, the Federal Republic declares its intention to pursue a general policy of non-discrimination toward the United Nations and their nationals and toward the property, rights and interests of such Nations and nationals, and in general to accord national and most-favoured nation treatment in matters affecting such Nations and nationals and their property, rights and interests in the field of establishment and navigation. The Federal Republic further declares its readiness to enter into treaties with the United Nations based on these principles.

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[EXTRACT FROM THE TREATY OF PEACE WITH JAPAN]

[ENTERED INTO FORCE APRIL 28, 1952]

[TIAS 2490]

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CHAPTER V

Claims and Property

ARTICLE 14

(a) It is recognized that Japan should pay reparations to the Allied Powers for the damage and suffering caused by it during the war. Nevertheless it is also recognized that the resources of Japan are not presently sufficient, if it is to maintain a viable economy, to make complete reparation for all such damage and suffering and at the same time meet its other obligations.

Therefore,

1. Japan will promptly enter into negotiations with Allied Powers so desiring, whose present territories were occupied by Japanese forces and damaged by Japan, with a view to assisting to compensate those countries for the cost of repairing the damage done, by making available the services of the Japanese people in production, salvaging and other work for the Allied Powers in question. Such arrangements shall avoid the imposition of additional liabilities on other Allied Powers, and, where the manufacturing of raw materials is called for, they shall be supplied by the Allied Powers in question, so as not to throw any foreign exchange burden upon Japan.

2. (I) Subject to the provisions of sub-paragraph (II) below, each of the Allied Powers shall have the right to seize, retain, liquidate or otherwise dispose of all property, rights and interests of

(a) Japan and Japanese nationals,

(b) persons acting for or on behalf of Japan or Japanese nationals, and

(c) entities owned or controlled by Japan or Japanese nationals,

which on the first coming into force of the present Treaty were subject to its jurisdiction. The property, rights and interests specified in this sub-paragraph shall include those now blocked, vested or in the possession or under the control of enemy property authorities of Allied Powers, which belonged to, or were held or managed on behalf of, any of the persons or entities mentioned in (a), (b) or (c) above at the time such assets came under the controls of such authorities.

(II) The following shall be excepted from the right specified in subparagraph (I) above:

(i) property of Japanese natural persons who during the war resided with the permission of the Government concerned in the territory of one of the Allied Powers, other than territory occupied by Japan, except property subjected to restrictions during the war and not released from such restrictions as of the date of the first coming into force of the present Treaty;

(ii) all real property, furniture and fixtures owned by the Government of Japan and used for diplomatic or consular purposes, and all personal furniture and furnishings and other private property not of an investment nature which was normally necessary for the carrying out of diplomatic and consular functions, owned by Japanese diplomatic and consular personnel;

(iii) property belonging to religious bodies or private charitable institutions and used exclusively for religious or charitable purposes;

(iv) property, rights and interests which have come within its jurisdiction in consequence of the resumption of trade and financial relations subsequent to September 2, 1945, between the country concerned and Japan, except such as have resulted from transactions contrary to the laws of the Allied Power concerned;

(v) obligations of Japan or Japanese nationals, any right, title or interest in tangible property located in Japan, interests in enterprises organized under the laws of Japan, or any paper evidence thereof; provided that this exception shall only apply to obligations of Japan and its nationals expressed in Japanese currency.

(III) Property referred to in exceptions (i) through (v) above shall be returned subject to reasonable expenses for its preservation and administration. If any such property has been liquidated the proceeds shall be returned instead.

(IV) The right to seize, retain, liquidate or otherwise dispose of property as provided in sub-paragraph (I) above shall be exercised in accordance with the laws of the Allied Power concerned, and the owner shall have only such rights as may be given him by those laws.

(V) The Allied Powers agree to deal with Japanese trademarks and literary and artistic property rights on a basis as favorable to Japan as circumstances ruling in each country will permit.

(b) Except as otherwise provided in the present Treaty, the Allied Powers waive all reparations claims of the Allied Powers, other claims of the Allied Powers and their nationals arising out of any actions taken by Japan and its nationals in the course of the prosecution of the war, and claims of the Allied Powers for direct military costs of occupation.

ARTICLE 15

(a) Upon application made within nine months of the coming into force of the present Treaty between Japan and the Allied Power concerned, Japan will, within six months of the date of such application, return the property, tangible and intangible, and all rights or interests of any kind in Japan of each Allied Power and its nationals which was within Japan at any time between December 7, 1941, and September 2, 1945, unless the owner has freely disposed thereof without duress or fraud. Such property shall be returned free of all encumbrances and charges to which it may have become subject because of the war, and without any charges for its return. Property whose return is not applied for by or on behalf of the owner or by his Government within the prescribed period may be disposed of by the Japanese Government as it may determine. In cases where such property was within Japan on December 7, 1941, and cannot be returned or has suffered injury or damage as a result of the war, compensation will be made on terms not less favorable than the terms provided in the draft Allied Powers Property Compensation Law approved by the Japanese Cabinet on July 13, 1951.

(b) With respect to industrial property rights impaired during the war, Japan will continue to accord to the Allied Powers and their nationals benefits no less than those heretofore accorded by Cabinet Orders No. 309 effective September 1, 1949, No. 12 effective January 28, 1950, and No. 9 effective February 1, 1950, all as now amended, provided such nationals have applied for such benefits within the time limits prescribed therein.

(c) (i) Japan acknowledges that the literary and artistic property rights which existed in Japan on December 6, 1941, in respect to the published and unpublished works of the Allied Powers and their nationals have continued in force since that date, and recognizes those rights which have arisen, or but for the war would have arisen, in Japan since that date, by the operation of any conventions and agreements to which Japan was a party on that date, irrespective of whether or not such conventions or agreements were abrogated or suspended upon or since the outbreak of war by the domestic law of Japan or of the Allied Power concerned.

(ii) Without the need for application by the proprietor of the right and without the payment of any fee or compliance with any other formality, the period from December 7, 1941, until the coming into force of the present Treaty between Japan and the Allied Power concerned shall be excluded from the running of the normal term of such rights; and such period, with an additional period of six months, shall be excluded from the time within which a literary work must be translated into Japanese in order to obtain translating rights in Japan.

ARTICLE 16

As an expression of its desire to indemnify those members of the armed forces of the Allied Powers who suffered undue hardships while prisoners of war of Japan, Japan will transfer its assets and those of its nationals in countries which were neutral during the war, or which were at war with any of the Allied Powers, or, at its option, the equivalent of such assets, to the International Committee of the Red Cross

which shall liquidate such assets and distribute the resultant fund to appropriate national agencies, for the benefit of former prisoners of war and their families on such basis as it may determine to be equitable. The categories of assets described in Article 14 (a) 2 (II) (ii) through (v) of the present Treaty shall be excepted from transfer, as well as assets of Japanese natural persons not residents of Japan on the first coming into force of the Treaty. It is equally understood that the transfer provision of this Article has no application to the 19,770 shares in the Bank for International Settlements presently owned by Japanese financial institutions.

Article 17

(a) Upon the request of any of the Allied Powers, the Japanese Government shall review and revise in conformity with international law any decision or order of the Japanese Prize Courts in cases involving ownership rights of nationals of that Allied Power and shall supply copies of all documents comprising the records of these cases, including the decisions taken and orders issued. In any case in which such review or revision shows that restoration is due, the provisions of Article 15 shall apply to the property concerned.

(b) The Japanese Government shall take the necessary measures to enable nationals of any of the Allied Powers at any time within one year from the coming into force of the present Treaty between Japan and the Allied Power concerned to submit to the appropriate Japanese authorities for review any judgment given by a Japanese court between December 7, 1941, and such coming into force, in any proceedings in which any such national was unable to make adequate presentation of his case either as plaintiff or defendant. The Japanese Government shall provide that, where the national has suffered injury by reason of any such judgment, he shall be restored in the position in which he was before the judgment was given or shall be afforded such relief as may be just and equitable in the circumstances.

Article 18

(a) It is recognized that the intervention of the state of war has not affected the obligation to pay pecuniary debts arising out of obligations and contracts (including those in respect of bonds) which existed and rights which were acquired before the existence of a state of war, and which are due by the Government or nationals of Japan to the Government or nationals of one of the Allied Powers, or are due by the Government or nationals of one of the Allied Powers to the Government or nationals of Japan. The intervention of a state of war shall equally not be regarded as affecting the obligation to consider on their merits claims for loss or damage to property or for personal injury or death which arose before the existence of a state of war, and which may be presented or re-presented by the Government of one of the Allied Powers to the Government of Japan, or by the Government of Japan to any of the Governments of the Allied Powers. The provisions of this paragraph are without prejudice to the rights conferred by Article 14.

(b) Japan affirms its liability for the prewar external debt of the Japanese State and for debts of corporate bodies subsequently declared

to be liabilities of the Japanese State, and expresses its intention to enter into negotiations at an early date with its creditors with respect to the resumption of payments on those debts; to encourage negotiations in respect to other prewar claims and obligations; and to facilitate the transfer of sums accordingly.

ARTICLE 19

(a) Japan waives all claims of Japan and its nationals against the Allied Powers and their nationals arising out of the war or out of actions taken because of the existence of a state of war, and waives all claims arising from the presence, operations or actions of forces or authorities of any of the Allied Powers in Japanese territory prior to the coming into force of the present Treaty.

(b) The foregoing waiver includes any claims arising out of actions taken by any of the Allied Powers with respect to Japanese ships between September 1, 1939, and the coming into force of the present Treaty, as well as any claims and debts arising in respect to Japanese prisoners of war and civilian internees in the hands of the Allied Powers, but does not include Japanese claims specifically recognized in the laws of any Allied Power enacted since September 2, 1945.

(c) Subject to reciprocal renunciation, the Japanese Government also renounces all claims (including debts) against Germany and German nationals on behalf of the Japanese Government and Japanese nationals, including intergovernmental claims and claims for loss or damage sustained during the war, but excepting (a) claims in respect of contracts entered into and rights acquired before September 1, 1939, and (b) claims arising out of trade and financial relations between Japan and Germany after September 2, 1945. Such renunciation shall not prejudice actions taken in accordance with Articles 16 and 20 of the present Treaty.

(d) Japan recognizes the validity of all acts and omissions done during the period of occupation under or in consequence of directives of the occupation authorities or authorized by Japanese law at that time, and will take no action subjecting Allied nationals to civil or criminal liability arising out of such acts or omissions.

ARTICLE 20

Japan will take all necessary measures to ensure such disposition of German assets in Japan as has been or may be determined by those powers entitled under the Protocol of the proceedings of the Berlin Conference of 1945 to dispose of those assets, and pending the final disposition of such assets will be responsible for the conservation and administration thereof.

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[EXTRACT FROM THE TREATY OF PEACE WITH BULGARIA]

[ENTERED INTO FORCE SEPTEMBER 15, 1947]

[TIAS 1650]

[NOTE.—Similar provisions were contained in the Treaties of Peace with Italy, Roumania and Hungary]

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PART VI

ECONOMIC CLAUSES

Article 23

1. In so far as Bulgaria has not already done so, Bulgaria shall restore all legal rights and interests in Bulgaria of the United Nations and their nationals as they existed on April 24, 1941, and shall return all property in Bulgaria of the United Nations and their nationals as it now exists.

2. The Bulgarian Government undertakes that all property, rights and interests passing under this Article shall be restored free of all encumbrances and charges of any kind to which they may have become subject as a result of the war and without the imposition of any charges by the Bulgarian Government in connection with their return. The Bulgarian Government shall nullify all measures, including seizures, sequestration or control, taken by it against United Nations property between April 24, 1941, and the coming into force of the present Treaty. In cases where the property has not been returned within six months from the coming into force of the present Treaty, application shall be made to the Bulgarian authorities not later than twelve months from the coming into force of the Treaty, except in cases in which the claimant is able to show that he could not file his application within this period.

3. The Bulgarian Government shall invalidate transfers involving property, rights and interests of any description belonging to United Nations nationals, where such transfers resulted from force or duress exerted by Axis Governments or their agencies during the war.

4. (*a*) The Bulgarian Government shall be responsible for the restoration to complete good order of the property returned to United Nations nationals under paragraph 1 of this Article. In cases where property cannot be returned or where, as a result of the war, a United Nations national has suffered a loss by reason of injury or damage to property in Bulgaria, he shall receive from the Bulgarian Government compensation in levas to the extent of two-thirds of the sum necessary, at the date of payment, to purchase similar property or to make good the loss suffered. In no event shall United Nations nationals receive less favourable treatment with respect to compensation than that accorded to Bulgarian nationals.

(*b*) United Nations nationals who hold, directly or indirectly, ownership interests in corporations or associations which are not United Nations nationals within the meaning of paragraph 8 (*a*) of this Article, but which have suffered a loss by reason of injury or dam-

age to property in Bulgaria, shall receive compensation in accordance with sub-paragraph (*a*) above. This compensation shall be calculated on the basis of the total loss or damage suffered by the corporation or association and shall bear the same proportion to such loss or damage as the beneficial interests of such nationals in the corporation or association bear to the total capital thereof.

(*c*) Compensation shall be paid free of any levies, taxes or other charges. It shall be freely usable in Bulgaria but shall be subject to the foreign exchange control regulations which may be in force in Bulgaria from time to time.

(*d*) The Bulgarian Government shall accord to United Nations nationals the same treatment in the allocation of materials for the repair or rehabilitation of their property in Bulgaria and in the allocation of foreign exchange for the importation of such materials as applies to Bulgarian nationals.

(*e*) The Bulgarian Government shall grant United Nations nationals an indemnity in levas at the same rate as provided in sub-paragraph (*a*) above to compensate them for the loss or damage due to special measures applied to their property during the war, and which were not applicable to Bulgarian property. This sub-paragraph does not apply to a loss of profit.

5. All reasonable expenses incurred in Bulgaria in establishing claims, including the assessment of loss or damage, shall be borne by the Bulgarian Government.

6. United Nations nationals and their property shall be exempted from any exceptional taxes, levies or imposts imposed on their capital assets in Bulgaria by the Bulgarian Government or any Bulgarian authority between the date of the Armistice and the coming into force of the present Treaty for the specific purpose of meeting charges arising out of the war or of meeting the costs of occupying forces or of reparation payable to any of the United Nations. Any sums which have been so paid shall be refunded.

7. The owner of the property concerned and the Bulgarian Government may agree upon arrangements in lieu of the provisions of this Article.

8. As used in this Article:

(*a*) "United Nations nationals" means individuals who are nationals of any of the United Nations, or corporations or associations organised under the laws of any of the United Nations, at the coming into force of the present Treaty, provided that the said individuals, corporations or associations also had this status at the date of the Armistice with Bulgaria.

The term "United Nations nationals" also includes all individuals, corporations or associations which, under the laws in force in Bulgaria during the war, have been treated as enemy;

(*b*) "Owner" means the United Nations national, as defined in sub-paragraph (*a*) above, who is entitled to the property in question, and includes a successor of the owner, provided that the successor is also a United Nations national as defined in sub-paragraph (*a*). If the successor has purchased the property in its damaged state, the transferor shall retain his rights to compensation under this Article, without prejudice to obligations between the transferor and the purchaser under domestic law;

(*c*) "Property" means all movable or immovable property, whether tangible or intangible, including industrial, literary and artistic property, as well as all rights or interests of any kind in property.

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Article 25

1. Each of the Allied and Associated Powers shall have the right to seize, retain, liquidate or take any other action with respect to all property, rights and interests which at the coming into force of the present Treaty are within its territory and belong to Bulgaria or to Bulgarian nationals, and to apply such property or the proceeds thereof to such purposes as it may desire, within the limits of its claims and those of its nationals against Bulgaria or Bulgarian nationals, including debts, other than claims fully satisfied under other Articles of the present Treaty. All Bulgarian property, or the proceeds thereof, in excess of the amount of such claims, shall be returned.

2. The liquidation and disposition of Bulgarian property shall be carried out in accordance with the law of the Allied or Associated Power concerned. The Bulgarian owner shall have no rights with respect to such property except those which may be given him by that law.

3. The Bulgarian Government undertakes to compensate Bulgarian nationals whose property is taken under this Article and not returned to them.

4. No obligation is created by this Article on any Allied or Associated Power to return industrial property to the Bulgarian Government or Bulgarian nationals, or to include such property in determining the amounts which may be retained under paragraph 1 of this Article. The Government of each of the Allied and Associated Powers shall have the right to impose such limitations, conditions and restrictions on rights or interests with respect to industrial property in the territory of that Allied or Associated Power, acquired prior to the coming into force of the present Treaty by the Government or nationals of Bulgaria, as may be deemed by the Government of the Allied or Associated Power to be necessary in the national interest.

5. The property covered by paragraph 1 of this Article shall be deemed to include Bulgarian property which has been subject to control by reason of a state of war existing between Bulgaria and the Allied or Associated Power having jurisdiction over the property, but shall not include:

(*a*) Property of the Bulgarian Government used for consular or diplomatic purposes;

(*b*) Property belonging to religious bodies or private charitable institutions and used for religious or charitable purposes;

(*c*) Property of natural persons who are Bulgarian nationals permitted to reside within the territory of the country in which the property is located or to reside elsewhere in United Nations territory, other than Bulgarian property which at any time during the war was subjected to measures not generally applicable to the property of Bulgarian nationals resident in the same territory;

(*d*) Property rights arising since the resumption of trade and financial relations between the Allied and Associated Powers and

Bulgaria, or arising out of transactions between the Government of any Allied or Associated Power and Bulgaria since October 28, 1944;

(*e*) Literary and artistic property rights.

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Article 27

1. The existence of the state of war shall not, in itself, be regarded as affecting the obligation to pay pecuniary debts arising out of obligations and contracts which existed, and rights which were acquired, before the existence of the state of war, which became payable prior to the coming into force of the present Treaty, and which are due by the Government or nationals of Bulgaria to the Government or nationals of one of the Allied and Associated Powers or are due by the Government or nationals of one of the Allied and Associated Powers to the Government or nationals of Bulgaria.

2. Except as otherwise expressly provided in the present Treaty, nothing therein shall be construed as impairing debtor-creditor relationships arising out of pre-war contracts concluded either by the Government or nationals of Bulgaria.

Article 28

1. Bulgaria waives all claims of any description against the Allied and Associated Powers on behalf of the Bulgarian Government or Bulgarian nationals arising directly out of the war or out of actions taken because of the existence of a state of war in Europe after September 1, 1939, whether or not the Allied or Associated Power was at war with Bulgaria at the time, including the following:

(*a*) Claims for losses or damages sustained as a consequence of acts of forces or authorities of Allied or Associated Powers;

(*b*) Claims arising from the presence, operations or actions of forces or authorities of Allied or Associated Powers in Bulgarian territory;

(*c*) Claims with respect to the decrees or orders of Prize Courts of Allied or Associated Powers, Bulgaria agreeing to accept as valid and binding all decrees and orders of such Prize Courts on or after September 1, 1939, concerning Bulgarian ships or Bulgarian goods or the payment of costs;

(*d*) Claims arising out of the exercise or purported exercise of belligerent rights.

2. The provisions of this Article shall bar, completely and finally, all claims of the nature referred to herein, which will be henceforward extinguished, whoever may be the parties in interest. The Bulgarian Government agrees to make equitable compensation in levas to persons who furnished supplies or services on requisition to the forces of Allied or Associated Powers in Bulgarian territory and in satisfaction of non-combat damage claims against the forces of Allied or Associated Powers arising in Bulgarian territory.

3. Bulgaria likewise waives all claims of the nature covered by paragraph 1 of this Article on behalf of the Bulgarian Government or Bulgarian nationals against any of the United Nations whose diplomatic relations with Bulgaria were broken off duing the war and

which took action in cooperation with the Allied and Associated Powers.

4. The waiver of claims by Bulgaria under paragraph 1 of this Article includes any claims arising out of actions taken by any of the Allied and Associated Powers with respect to Bulgarian ships between September 1, 1939, and the coming into force of the present Treaty, as well as any claims and debts arising out of the Conventions on prisoners of war now in force.

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[EXTRACT FROM THE BRUSSELS AGREEMENT RELATING TO THE RESOLUTION OF CONFLICTING CLAIMS TO GERMAN ENEMY ASSETS] [1]

[ENTERED INTO FORCE JANUARY 24, 1951]

[TIAS 2230]

The Governments Parties to the present Agreement,

Desiring to resolve conflicting claims to German enemy assets within their respective jurisdictions and to facilitate the disposal of such assets to the common advantage,

Have agreed as follows:

ARTICLE 1.

In dealing with German enemy assets the Parties to the present Agreement (hereinafter and in the Annex hereto referred to as Parties) shall be guided as far as possible, in their relations with each other, by the provisions set forth in the present Agreement and in its Annex (hereinafter and in the Annex hereto together referred to as the Agreement), and shall take such action to give effect to the Agreement as may be necessary and appropriate.

ARTICLE 2.

The Agreement shall not supersede any prior agreements concluded between any two or more Parties, or between a Party and another Government not a Party; provided that no such prior agreement between any of the Parties shall adversely affect the rights under the Agreement of another Party not party to the prior agreement, or those of its nationals.

When a prior agreement between a Party and another Government is deemed by a Party, not party to the prior agreement, to affect adversely its right under the Agreement or those of its nationals, the Party who is also party to the prior agreement shall approach the other Government in order to secure, if possible, such modification of the relevant provisions of the prior agreement as will render them consistent with the Agreement.

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[1] The following countries are parties to this Agreement: The United States, Belgium, Canada, Cuba, Denmark, Haiti, Honduras, Luxembourg, the Netherlands, and Nicaragua.

ARTICLE 3.

Nothing in the Agreement shall preclude any Party or Parties from concluding in the future any separate agreement; provided that such subsequent agreement shall not affect adversely the rights under the Agreement of another Party not party to the subsequent agreement, or those of its nationals.

ARTICLE 4.

If a dispute arises between two or more Parties with respect to the interpretation, implementation or application of the Agreement, such Parties shall endeavour by every means possible to settle such dispute by negotiation between themselves, which may include the use of a mutually acceptable conciliator with such powers as the Parties in dispute may agree. If the dispute is not resolved within a reasonable time by such negotiation, the dispute shall be settled in the manner provided in Part VI of the Annex.

ARTICLE 5.

The Agreement shall come into force, as respects Governments which have signed it before it comes into force, as soon as it has been signed at any time before September 1, 1951,[2] on behalf of Governments which, under Part I, Article 1 B of the Paris Agreement on Reparation of January 24, 1946, are collectively entitled to not less than 35 percent of the aggregate of shares in Category A of German reparations.

The Agreement shall remain open for signature by other Governments Members of the Inter-Allied Reparation Agency for a period of six months from the date upon which it comes into force, and shall become effective with respect to those Governments immediately upon signature.

ARTICLE 6.

If any Government which is not a member of the Inter-Allied Reparation Agency signifies in writing to the Government of Belgium within nine months of the date upon which the Agreement comes into force that it desires to become a Party to the Agreement, or to a similar agreement, the Parties will consider in consultation with one another and with that Government its participation in such an agreement; provided that nothing in this Article shall be deemed to qualify any right of any Party under Article 3 above.

ARTICLE 7.

Any Government to which the Agreement is open for signature may, in lieu of signing, give notification of accession, in writing, to the Government of Belgium, and a Government making such notification of accession shall be deemed to have signed the Agreement on the date of receipt of the notification by the Government of Belgium.

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[2] Originally September 1, 1948. The date September 1, 1951, was substituted for the date in this paragraph by a protocol done in Brussels, Belgium, on January 24, 1951.

ARTICLE 8.

Any signatory Government may, at the time of signature or later, declare by notification in writing to the Government of Belgium that it desires the Agreement to apply to all or any of its overseas territories or colonies or territories under its suzerainty or protection or territories in respect of which it exercises a mandate or trusteeship, and the Agreement shall apply to the colonies and territories, named in the notification, from the date of receipt thereof by the Government of Belgium or from the date on which the Agreement comes into force in respect of the notifying Government, whichever is the later.

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ANNEX

PART I

Property Owned by German Enemies

ARTICLE 1.

A.—For the purpose of this Article, "security" means any stock, bond, debenture, share or, in general, any similar property known as a "security"; in the country of issue.

B.—Where a security owned by a German enemy has been issued by a Party or by a governmental or private organisation or person within its territory but the certificate is in the territory of another Party, the certificate, whether in registered or in bearer form, shall be released to the former Party.

C.—A German enemy owner of a certificate issued by an administration office, voting trustee or similar organisation or person, and indicating a participation in one or more specifically named securities, shall be regarded as the owner of the amount of securities specifically indicated, and Paragraph B of this Article shall apply to these securities.

D.—A Party obliged under this Article to release a certificate shall not be required to release the income (in cash or otherwise) which has before July 1, 1947, been received in its territory by the releasing Party or by any person acting under its authority. Income received by such Party or person on or after July 1, 1947, shall be released to the Party entitled to the release of the certificate.

E.—A Party obliged under this Article to release a certificate shall not be required to release the proceeds of any liquidation by sale, redemption or otherwise, which were, on December 31, 1946, in the form of cash or of securities issued by that Party or by a Governmental or private organisation or person within its territory, even if such cash was reinvested or such securities were sold or traded after that date. If the proceeds were, on December 31, 1946, in the form of securities issued by another Party or by a Governmental or private organisation or person within its territory, such securities (or the proceeds of their liquidation after that date) shall be released to the latter Party.

ARTICLE 2.

A.—For the purpose of this Article, "currency" means any notes, coins or other similar monetary media except those of numismatic or historical value.

B.—Where currency has been issued by a Party or by a Governmental or private organisation acting under its authority but the currency is owned by a German enemy and is in the territory of another Party, the currency shall be released to the former Party.

C.—Where currency has been sold before January 1, 1947, no release shall be required; but release of the proceeds shall be required if sale has taken place on or after January 1, 1947.

D.—Nothing in this Article shall prejudice any rights or obligations which Parties may have under Part III of the Paris Agreement on Reparations.

ARTICLE 3.

Where a negotiable instrument (such as a bill of exchange, promissory note, cheque or draft), not covered by Article 4 of this Annex, owned by a German enemy, is in the territory of a Party and the principal obligor is resident in the territory of another Party, the instrument shall be released to the latter Party.

ARTICLE 4.

Where a bill of lading, warehouse receipt or other similar instrument, whether or not negotiable, owned by a German enemy, is in the territory of a Party but the property to which it relates is located in the territory of another Party, the instrument shall be released to the latter Party.

ARTICLE 5.

A.—A foreign currency account ("primary account") maintained in favour of a German enemy by a financial institution in the territory of a Party ("primary country") covered in whole or in part by an account ("cover account") with a financial institution in the territory of another Party ("secondary country") shall be treated as follows:

i) The cover account shall be released and the primary country shall reimburse the secondary country in an amount equal to 50% of the cover account applicable to the primary account. Such reimbursement shall be made in accordance with the terms of Article 14 of this Annex.

ii) Where the secondary country has vested or otherwise taken under custodian control the income from German enemy property situated in the secondary country or the proceeds of the liquidation of German enemy owned securities issued by the secondary country or by a Governmental or private organisation or person within its territory and which securities were held in a custody or depot account, such income or such proceeds may be retained by the secondary country and, sub-paragraph (i) of this Paragraph shall not apply thereto.

B.—For the purpose of this Article accounts shall include named.

numbered or otherwise specially designated accounts and sub-accounts as well as undesignated accounts and sub-accounts.

ARTICLE 6.

Where property covered by this Part is owned partly by a German enemy and partly by a non-enemy, the method of segregating the respective interests and releasing the enemy interest shall be determined by agreement between the interested Parties. The German enemy interests shall then be released to the Party which would have been entitled to the property if it had been wholly German enemy owned.

PART II

Deceaseds' Estates, Trusts and Other Fiduciary Arrangements Under Which a German Enemy Has an Interest

ARTICE 7.

A.—Except as provided in Paragraph B of this Article, property within the jurisdiction of a Party, forming part of the estate of a non-enemy person who has died domiciled in the territory of another Party, in which estate a German enemy has an interest whether as a beneficiary or creditor, shall be released from control of the custodian authorities of the former Party with a view to facilitating normal administration of the estate in the territory of the latter Party. Property so released shall be subject to the application of the laws of the releasing Party governing administration and distribution of the deceaseds' estates. When under such laws distribution of the deceased's estate is made directly to the persons who have an interest in the estate, the releasing Party shall take appropriate action to assist in making available to the other Party the distributive share of each German enemy.

B.—Notwithstanding the provisions of Paragraph A of this Article, where a non-enemy domiciled in the territory of one Party has died owning immovable property in the territory of another Party and an interest in the property devolves upon or is to be distributed to a German enemy under the will of the deceased or under the applicable laws of descent, the interest may be retained by the latter Party, subject to the rights of non-enemy creditors of the deceased or of non-enemy heirs to whom, under applicable law, a portion of the immovable property is reserved.

C.—This Article shall not apply to any property in the estate of a deceased if the property was administered and distributed before the Party in whose territory the property was located instituted war-time emergency measures applicable to the administration and distribution of the property of the deceased.

D.—For the purposes of this Article, the domicile of a deceased shall be determined according to the law of the Party within whose jurisdiction the property is located.

ARTICLE 8.

Property within the jurisdiction of a Party which is held under a bona fide trust or other bona fide fiduciary arrangement in which a German enemy has an interest as a beneficiary or otherwise, and which trust or fiduciary arrangement is being administered under the laws of another Party, shall be released from the control of the custodian authorities of the former Party, except that such Party may retain any interest of a German enemy in immovable property located in its territory. Such release shall not be obligatory under this Part of this Annex in cases where the trust or other fiduciary arrangement was established by a person resident in Germany, or a German enemy, or a person who subsequently became a German enemy.

ARTICLE 9.

The Party in favour of which property is released under this Part of this Annex shall recognise the rights of non-enemies in the estate, trust or other fiduciary arrangement.

ARTICLE 10.

The principles of Part I of this Annex shall not be applicable to property released under this Part or distributed to the custodian authorities of a Party from an estate, bona fide trust or other bona fide fiduciary arrangement governed by this Part.

PART III

Property Owned by Enterprises Organised Under the Laws of a Party

ARTICLE 11.

A.—This Part shall apply to property situated within the jurisdiction of a Party and owned by an enterprise organised under the laws of another Party in which enterprise there was a direct or indirect German enemy interest on the material date. The Party within whose jurisdiction the property is situated shall be referred to as the "secondary country" with respect to that property. The enterprise owning the property shall be referred to as the "primary company" with respect to that property. The Party under whose laws the enterprise is organised shall be referred to as the "primary country" with respect to that property. The terms "enterprise" and "company" shall include any firm or body of persons, whether corporate or unincorporate. Property of an enterprise organised in the form of a trust, and property of a banking or financial institution other than the foreign currency cover accounts governed by Article 5 of this Annex, shall be dealt with under this Part. However, this exception with respect to cover accounts shall not be construed to imply that any cover accounts are or are not the property of the institution.

B.—An enterprise shall be deemed to be German controlled if at the material date German enemies held directly or indirectly:

i) 50 percent or more of the voting rights, outstanding capital stock or other proprietorship interests, or

ii) participating rights in a voting trust arrangement which rights represented 50 percent or more of such voting rights, outstanding capital stock or other proprietorship interests;

or if at the material date German enemies directly or indirectly controlled the policy, management, voting power or operations of the enterprise. The property in the secondary country shall be deemed to be German controlled if at the material date German enemies directly or indirectly controlled the policy, management, use, or operation of the property.

ARTICLE 12.

Except as otherwise provided in this Agreement, all property in a secondary country owned by a primary company shall be released by the secondary country and the secondary country shall be entitled to receive reimbursement from the primary country in an amount representing that portion of the value of the property in the secondary country which corresponds to the percentage of direct and indirect German enemy interest in the primary company on the material date. Release in each case shall take place as soon as an agreement has been reached between the countries concerned on whether either the property in the secondary country or the primary company shall be treated as German controlled and on the general limits of, and method of calculating, the percentage of direct and indirect German enemy interest in the primary company on the material date. If the property in the secondary country and the primary company are not German controlled, the property shall be released forthwith without reimbursement.

ARTICLE 13.

A.—Release of property in a secondary country shall be made in kind unless:

i) the property has been liquidated by the secondary country prior to the date on which the Agreement comes into force in respect of that country; or

ii) the primary and secondary countries concerned agree that release in kind would not be practicable or the primary company consents to the sale or liquidation of the property by the secondary country; or

iii) the property in the secondary country is a production enterprise or a substantial interest therein, and such property or the primary company concerned is German controlled and, after full consideration of the economic interest of the primary country, the secondary country determines in exceptional cases that its national security nevertheless requires retention of the property and gives notice to the primary country to that effect.

B.—Where release is not made in kind, the secondary country shall release in substitution the proceeds of the sale or liquidation of the property which would otherwise have been released in kind. If such property has not been sold or liquidated within one year after agreement or consent under sub-paragraph (ii) of Paragraph A of this Article or the giving of notice under sub-paragraph (iii) thereof, or within an agreed extension beyond that period, the value of the property retained as determined by accepted principles of valuation shall be released.

ARTICLE 14.

Reimbursement shall be paid to the secondary country by the primary country in the currency of the secondary country within two years after the date of release of the property. Payment may be delayed, however, in accordance with foreign exchange restrictions applicable generally to payment of capital obligations from time to time in effect in the primary country, provided that such restrictions are maintained in accordance with the Articles of Agreement of the International Monetary Fund and provided further that in any event full payment shall be made within seven years after the date of the release. Interest at the rate of 2 percent per annum shall be paid to the secondary country by the primary country on such balance of reimbursement as remains unpaid at and after the end of the two year period.

ARTICLE 15.

Where administrative difficulty to the secondary country requires it or in other special circumstances the secondary and primary countries concerned may agree that the secondary country shall retain that proportion of the value of the property in the secondary country to which it is entitled under the provisions of Article 12 of this Annex. In such event, the secondary country shall release the excess of the property above the amount to which it is entitled and such excess shall inure to the benefit solely of the non-enemy interests in the primary company.

ARTICLE 16.

Where the primary company is a dummy company or is a holding company whose outstanding stock is closely held or is not regularly traded in a recognised financial market, the secondary country, notwithstanding the provisions of Article 12 of this Annex, may retain that proportion of the property in the secondary country which corresponds to the percentage of direct and indirect German enemy interest in the dummy or holding company on the material date. In such event, the secondary country shall release the excess of the property above the amount to which it is entitled and such excess shall inure to the benefit solely of the non-enemy interests in the primary company.

ARTICLE 17.

It is contemplated that the proportion of the value of the property in the secondary country which corresponds to the percentage of the direct and indirect non-enemy interests in the primary company shall inure to the benefit of such non-enemy interests. In arrangements for release and reimbursement made under this Part between two or more Parties, the Parties shall make reasonable provision to avoid injury to interests in the primary company of non-enemies who are nationals of a third Party.

ARTICLE 18.

In applying the rules of this Part to a case involving a chain of companies, releases of property and reimbursement payments shall be made between secondary countries and their respective primary

companies and countries. On the other hand, in calculating the percentage of direct and indirect German enemy interest in each of the successive primary companies, such interests shall be traced through the entire chain of companies.

ARTICLE 19.

With respect to the types of property covered by Articles 1 to 4 inclusive of this Annex, owned by enterprises governed by Part III of this Annex, that country which would be entitled to obtain release of property under the principles of such Articles shall be regarded as the secondary country for the purposes of Part III; in the case of foreign currency accounts under Article 5 of this Annex, maintained in favour of an enterprise governed by Part III, the country where the primary account is maintained and the country where the cover account is maintained shall each be regarded as the secondary country for the purposes of Part III to the extent of 50 percent of the foreign currency cover account.

ARTICLE 20.

An enterprise organised under the laws of Germany shall be considered as wholly German enemy for the purpose of administering this Part, but property which is received in reimbursement or retained by any country under this Part shall be available for the protection of non-enemy interests in such enterprise, in accordance with the provisions of Part IV of this Annex.

PART IV

Property Owned by Enterprises Organized Under the Laws of Germany

ARTICLE 21.

This Part shall apply to property within the jurisdiction of a Party owned by an enterprise organised under the laws of Germany in which enterprise non-enemy nationals of Parties directly or indirectly have, and on September 1, 1939, had an interest. Non-enemy nationals of Parties referred to in this Part must have been nationals of Parties as of September 1, 1939.

ARTICLE 22.

For the protection of the interests in the enterprise of non-enemy nationals, referred to in Article 21 of this Annex, the property to which this Part applies shall, subject to the provisions of Article 23 and 24 of this Annex, be released to the extent of those interests and pursuant to arrangements to be made between the Parties concerned, if non-enemy nationals of Parties directly or indirectly:

i) own and, on September 1, 1939, owned 25% or more of the shares in the enterprise; or

ii) control and, on September 1, 1939, controlled the enterprise.

ARTICLE 23.

No Party shall be obliged to release property under this Part, in respect of which no claim, sponsored by another Party, has been received by the former Party, within one year after the coming into force

of the Agreement between the respective Parties. Before sponsoring a claim under this Part, a Party shall be satisfied by a claimant, being one of its nationals, that Article 22 of this Annex applies. Where a claim is filed with the Party in whose jurisdiction the property is located and Article 22 of this Annex applies, such Party shall notify all other Parties and shall consider the claims of all non-enemy nationals of Parties who qualify under Article 21 of this Annex.

ARTICLE 24.

A.—Release of property under this Part shall be made in kind unless:

i) the property has been liquidated prior to the date on which an eligible sponsored claim is filed with respect to the property pursuant to Article 23 of this Annex, or

ii) the Parties concerned agree that release in kind would not be practicable; or

iii) the property to be released is a production enterprise or a substantial interest therein, and such property or the enterprise organised under the laws of Germany is German controlled and, after full consideration of the economic interests of the other Party or Parties concerned, the Party in whose jurisdiction the property is located determines in exceptional cases that its national security nevertheless requires retention of the property and gives notice to the other Party or Parties to that effect.

B.—Where release is not made in kind, there shall be released in substitution the proceeds of the sale or liquidation of the property which would otherwise have been released in kind. If such property has not been sold or liquidated within one year after agreement under sub-paragraph (ii) of Paragraph A of this Article or the giving of notice under sub-paragraph (iii) thereof, or within an agreed extension beyond that period, the value of the property retained as determined by accepted principles of valuation shall be released.

ARTICLE 25.

With respect to the types of property covered by Articles 1 to 4 inclusive of this Annex, owned by enterprises governed by Part IV of this Annex, property shall be regarded as being within the jurisdiction of the Party which would be entitled to obtain the release of such property under the principles of such Articles; in the case of foreign currency accounts under Article 5 of this Annex, maintained in favour of an enterprise governed by Part IV, the country where the primary account is maintained and the country where the cover account is maintained shall each be regarded as having jurisdiction over the property to the extent of 50% of the foreign currency cover account.

PART V

Interpretation and Application

ARTICLE 26.

A.—A Party shall not be obliged to release an enemy interest in property to another Party or to an enterprise organised under the laws of that other Party except to the extent that such interest will

be treated directly or indirectly by the recipient Party as German enemy.

B.—A Party obliged under the Agreement to release property shall not be required to reverse any act of liquidation which has been carried out by sale, redemption or otherwise. The vesting, sequestration or confiscation of property shall not be regarded as constituting liquidation for the purposes of the Agreement.

C.—Except as otherwise expressly provided in the Agreement, a Party obliged to release property shall, if the property has been liquidated, release the proceeds of such liquidation.

D.—Except as otherwise expressly provided in the Agreement, a Party obliged to release property shall release all income or other benefits (in cash or otherwise) which have been received by it or by any person in its territory acting under its authority in respect of that property.

E.—The Party to which property is released under the Agreement shall fully recognise bona fide liens or pledges thereon legally obtained within the territory of the releasing Party which became effective prior to the date when the recipient Party took war-time emergency measures to prevent the acquisition of liens or pledges with respect to such property or the date when the territory of the recipient Party was invaded by Germany and were valid under the laws of the recipient Party in effect prior to such date. A releasing Party shall not be obliged hereby to take any measures to set aside any bona fide lien or pledge valid under its laws which arose or was created either (*a*) prior to the date on which the releasing Party took war-time emergency measures to prevent the acquisition of such liens or pledges with respect to the property involved, or (*b*) after such date under license or other authorisation by such Party.

F.—Administrative charges and expenses of conservation and liquidation shall be borne by the recipient Party unless that Party requests the releasing Party to bear a portion thereof. In such event the obligation of the releasing Party shall be limited to the amount of the income or other benefits (if any) which the recipient Party establishes were received and were retained under the Agreement by the releasing Party or by any person in its territory acting under its authority with respect to the specific property released.

G.—Where property is subject to release under the Agreement the method of delivery and the payment of any delivery costs shall be arranged between the Parties concerned.

H.—(i) A Party shall not be required under the Agreement to make a release of property so long as there is pending any judicial or administrative proceeding in the territory of:

a) the releasing Party, if the proceeding requires retention of the property by that Party or may result in a determination that the property is not directly or indirectly German enemy owned or controlled;

b) the recipient Party, if the proceeding may result in a determination that the property is not directly or indirectly German enemy owned or controlled and may thus prevent that Party from treating the released property as German enemy.

ii) If, after property is released under the Agreement:

a) the recipient Party is obliged as a result of litigation in its territory to surrender custodian control of the property, the re-

leasing Party may reassert its custodian control over the property in order to make an independent test of the litigated issue;

b) the releasing Party is obliged as a result of litigation in its territory to make a disposition of the property which release has prevented it from making, that Party may reassert custodian control over the property in order to comply with the obligation imposed by the litigation.

If reassertion of custodian control by the releasing Party is required under this sub-paragraph, the recipient Party shall take appropriate action to facilitate such reassertion.

iii) At the request of the releasing Party, appropriate arrangements shall be made by the recipient Party prior to the release of any property:

a) assuring the releasing Party that it will be able to regain custodian control over the property or of the proceeds of sale or liquidation or of the value thereof, if required under the terms of sub-paragraph (ii) above;

b) for indemnification of charges or expenses which may be incurred by the releasing Party with respect to the released property after the date of release.

I.—The release of property under the provisions of the Agreement shall not terminate or otherwise affect the dedication of patents to the public, the placing of patents in the public domain or the grant of licenses to patents with or without royalty, pursuant to the provisions of Articles 1 or 2 of the German Patent Accord signed in London on July 27, 1946, or other agreement, when such action is taken prior to the release of the property.

J. — A Party shall be entitled at its discretion to refuse to accept a release under the provisions of the Agreement and in such event shall not be liable for payment of the charges and expenses referred to in Paragraphs F and G and sub-paragraph (iii) of Paragraph H of this Article.

Article 27.

A. — Nothing in the Agreement shall oblige any Party to recognise:

i) any transfer of, or other transaction relating to, a German enemy interest, occurring after the institution of war-time emergency measures by that Party or after the invasion of the territory of that Party by Germany;

ii) any transfer of non-enemy property in Germany to German enemies, or any assumption by German enemies from non-enemies, of control over property in Germany, which was forced without adequate consideration by action of the Government of Germany whether before or after September 1, 1939. This sub-paragraph shall apply only to property of, or controlled by, non-enemies who were nationals of Parties at the time of the transfer of the property or the assumption of control over the property.

B. — In determining whether any property is owned or controlled by a German enemy no transfer to a German enemy or dealings with a German enemy shall be taken into account which represent looting or forced transfers within the meaning of the Inter-Allied Declaration of January 5, 1943, against Acts of Dispossession.

ARTICLE 28.

Property which is held for the benefit of a German enemy by any individual or body of persons, corporate or unincorporate, as a cloak, nominee, agent, trustee or in any other capacity, shall be regarded as directly owned by that German enemy. The question of recognising any interest which the holder of such property may claim therein shall not be prejudiced by the foregoing but shall be resolved in each case by negotiation between the Parties concerned.

ARTICLE 29.

The assertion of custodian control over a German enemy interest in property within the territory of one Party shall not be deemed to have destroyed the German enemy interest in property within the territory of another Party.

ARTICLE 30.

A branch or other similar office within the territory of a Party of an enterprise organised under the laws of another country shall be regarded as a separate entity located within the territory of the Party. A partnership having its principal office in the territory of any Party shall be regarded as an enterprise located in that territory regardless of the residence or domicile of the partners.

ARTICLE 31.

Where under the Agreement special problems arise respecting a complex organisation having subsidiary or affiliated organisations with properties within the territories of several of the Parties, a committee composed of representatives of each of the interested Parties may be constituted to consider the problems and make recommendations for their solution.

ARTICLE 32.

Parties shall exchange information and otherwise co-operate for the purpose of giving effect to the Agreement; provided that information given pursuant hereto shall be regarded as confidential by the Party receiving it which undertakes to use it exclusively for the purpose of implementing the Agreement and the Paris Agreement on Reparation of January 24, 1946.

ARTICLE 33.

Nothing in the Agreement shall be construed to confer any right on an individual or body of persons, corporate or unincorporate, to prosecute a claim in any court or administrative tribunal against his or their Government or against any other Party.

ARTICLE 34.

In this Annex:

i) the term "property" shall include all rights, titles and interests in property;

ii) the expression "war-time emergency measures" means the measures for the control of German enemy owned property, or

of transactions by or on behalf of German enemies taken by a Party on or after September 1, 1939, whether or not taken prior to that Government's actual participation in the War;

iii) the expression "the material date" means the day on which the secondary country as defined in Part III of this Annex came into war or took war-time emergency measures, whichever is earlier.

PART VI

Conciliation

ARTICLE 35.

In order to give effect to the provisions of Article 4 of the Agreement, to which this is the Annex, a Panel of Conciliators consisting of seven members shall be established in the following manner:

i) Each Party which has signed the Agreement before the expiry of six months after its coming into force may, by written notice to the Secretary General of the Inter-Allied Reparation Agency, nominate not more than three candidates for election to the Panel, and the Secretary General shall not accept any nomination after the expiry of that period.

ii) The Secretary General shall, by secret ballot, conduct an election of the Panel of Conciliators and only those Parties which have signed the Agreement before the expiry of six months after its coming into force shall be entitled to vote.

iii) Each Party shall be entitled to cast one vote in respect of each vacancy on the Panel. A Party shall not cast more than one vote for any one candidate.

iv) The seven candidates receiving the highest number of votes shall be elected to the Panel; provided that no candidate shall be elected who has not received the vote of at least two-thirds of the Parties voting, and provided that not more than two nationals of the same country shall be elected.

v) From the seven members of the Panel so elected, the Parties entitled to vote, exercising one vote each, shall elect by secret ballot a President of the Panel by a majority of at least two-thirds of the votes cast.

vi) In case of the death or retirement of the President or any other member of the Panel, the vacancy shall be filled by vote of the then Parties. Each Party may nominate one candidate, and election shall be by a majority of at least two-thirds of the votes cast.

ARTICLE 36.

Immediately upon its election the Panel shall formulate, for its internal organisation and its work, such basic rules as it deems necessary. A fee therefor shall be paid to the members of the Panel by the Parties specified in sub-paragraph (ii) of Article 35 at a rate fixed by the Secretary General of the Inter-Allied Reparation Agency.

ARTICLE 37.

A. — If a dispute is not resolved within a reasonable time by negotiation as provided in Article 4 of the Agreement to which this is the Annex, a Party may request the President of the Panel of Conciliators referred to in Article 35 of this Annex to appoint from the Panel an impartial Conciliator who shall hear the Parties and may call for additional evidence. The Conciliator shall formulate a solution which is in his opinion the best possible solution in the spirit of the Agreement, and the solution so formulated shall be binding upon the Parties concerned and final.

B. — The President shall, upon application of any of the parties in dispute, determine whether a reasonable time has elapsed before submission of the case to conciliation under Paragraph A of this Article; provided that a period of less than one year from the commencement of negotiations between the Parties in dispute shall not be considered a reasonable time for the purposes of this Paragraph.

ARTICLE 38.

The question whether in the opinion of the secondary country, its national security requires the retention of property under sub-paragraph (iii) of Paragraph A of Article 13 of this Annex and sub-paragraph (iii) of Paragraph A of Article 24 of this Annex shall not be subject to the procedure of conciliation.

ARTICLE 39.

The Conciliator shall not be entitled to grant any modification of the obligation to make full payment in the currency of the secondary country within seven years after the date of the release as required by Article 14 of this Annex.

ARTICLE 40.

Each Party in dispute shall pay to the Conciliator such fees and expenses as he may determine. Any such Party may request the President of the Panel to review the fees and expenses fixed by the Conciliator, or their allocation between the Parties. The decision of the President on the matter shall be final.

Extract from

THE POTSDAM PROTOCOL, AUGUST 1, 1945

[Department of State Publication 4245; General Foreign Policy Series 53]

The Berlin Conference of the Three Heads of Government of the U. S. S. R., U. S. A., and U. K., which took place from July 17 to August 2, 1945, came to the following conclusions:

* * * * * * *

III. REPARATIONS FROM GERMANY

1. Reparation claims of the U. S. S. R. shall be met by removals from the zone of Germany occupied by the U. S. S. R., and from appropriate German external assets.

2. The U. S. S. R. undertakes to settle the reparation claims of Poland from its own share of reparations.

3. The reparation claims of the United States, the United Kingdom and other countries entitled to reparations shall be met from the Western Zones and from appropriate German external assets.

4. In addition to the reparations to be taken by the U. S. S. R. from its own zone of occupation, the U. S. S. R. shall receive additionally from the Western Zones:

(a) 15 percent of such usable and complete industrial capital equipment, in the first place from the metallurgical, chemical and machine manufacturing industries as is unnecessary for the German peace economy and should be removed from the Western Zones of Germany, in exchange for an equivalent value of food, coal, potash, zinc, timber, clay products, petroleum products, and such other commodities as may be agreed upon.

(b) 10 percent of such industrial capital equipment as is unnecessary for the German peace economy and should be removed from the Western Zones, to be transferred to the Soviet Government on reparations account without payment or exchange of any kind in return.

Removals of equipment as provided in (a) and (b) above shall be made simultaneously.

5. The amount of equipment to be removed from the Western Zones on account of reparations must be determined within six months from now at the latest.

6. Removals of industrial capital equipment shall begin as soon as possible and shall be completed within two years from the determination specified in paragraph 5. The delivery of products covered by 4 (a) above shall begin as soon as possible and shall be made by the U. S. S. R. in agreed installments within five years of the date hereof. The determination of the amount and character of the industrial capital equipment unnecessary for the German peace economy and therefore available for reparation shall be made by the Control Council under policies fixed by the Allied Commission on Reparations, with the participation of France, subject to the final approval of the Zone Commander in the Zone from which the equipment is to be removed.

7. Prior to the fixing of the total amount of equipment subject to removal, advance deliveries shall be made in respect to such equipment as will be determined to be eligible for delivery in accordance with the procedure set forth in the last sentence of paragraph 6.

8. The Soviet Government renounces all claims in respect of reparations to shares of German enterprises which are located in the Western Zones of Germany as well as to German foreign assets in all countries except those specified in paragraph 9 below.

9. The Governments of the U. K. and U. S. A. renounce all claims in respect of reparations to shares of German enterprises which are located in the Eastern Zone of occupation in Germany, as well as to German foreign assets in Bulgaria, Finland, Hungary, Rumania, and Eastern Austria.

10. The Soviet Government makes no claims to gold captured by the Allied troops in Germany.

* * * * * * *

Extract from the
ALLIED-SWISS ACCORD OF MAY 25, 1946

I

1. The Swiss Compensation Office shall pursue and complete its investigations of property of every description in Switzerland owned or controlled by Germans in Germany and it shall liquidate such property. This provision shall apply equally to the property of such other persons of German nationality as are to be repatriated.

2. The Germans affected by this measure shall be indemnified in German money for the property which has been liquidated in Switzerland pursuant to this Accord. In each such case an identical rate of exchange shall be applied.

3. Switzerland will, out of funds available to it in Germany, furnish one-half of the German money necessary for this purpose.

4. The Swiss Compensation Office shall exercise the functions entrusted to it in close cooperation with a Joint Commission which shall be composed of a representative of each of the three Allied Governments, and a representative of the Swiss Government. The Joint Commission, as all interested private persons, shall have a right of appeal against the decision of the Swiss Compensation Office.

5. The Swiss Government will bear the cost of the administration and liquidation of German property.

II

1. Of the proceeds of the liquidation of property in Switzerland of Germans in Germany, 50 percent shall accrue to the Swiss Government and 50 percent shall be placed at the disposal of the Allies for the rehabilitation of countries devastated or depleted by the war, including the sending of supplies to famine stricken people.

* * * * * * *

III

The procedures relating to the application of the present Accord are set out in the Annex.

IV

1. The Government of the United States will unblock Swiss assets in the United States. The necessary procedure will be determined without delay.

* * * * * * *

VI

In case differences of opinion arise with regard to the application or interpretation of this Accord which cannot be settled in any other way, recourse shall be had to arbitration.

* * * * * * *

ANNEX

I

A. Property in Switzerland of Germans in Germany as defined under IV below, hereinafter termed "German property", shall be liquidated in the following manner:

a. Persons in Switzerland indebted to Germans in Germany shall be required to pay their debts into an account in the name of the Swiss Compensation Office with the Swiss National Bank and thus absolve themselves of liability.

b. All natural and juridical persons in Switzerland who in any form administer German property are to be required to surrender these assets to the Compensation Office. Such action will terminate their liability. The Compensation Office will liquidate the property and pay the proceeds into the account mentioned under "a".

c. The Compensation Office shall take title to all participations in Swiss enterprises or organizations belonging to Germans in Germany and shall liquidate them. The proceeds of liquidation shall be paid into the account mentioned under "a".

d. The Compensation Office will similarly proceed with the liquidation of any other German property.

e. The Joint Commission will give sympathetic consideration to cases, brought to their attention by the Compensation Office, relating to property of Swiss origin located in Switzerland and belonging to women of Swiss birth married to Germans and residing in Germany.

B. The Compensation Office will make every effort with the assistance of the Joint Commission to uncover all transactions of a cloaking nature whether by pawn, pledge, mortgage or otherwise, by which German property was concealed, and will ensure their annulment.

C. The Compensation Office will notify to the Joint Commission, for transmission to the competent authorities in Germany, the amount realized by the liquidation in each case of German property with particulars of the names and addresses of the German owners of that property. The competent authorities in Germany will take the necessary measures in order that there will be recorded the title of the German owners of the property liquidated to receive the counter value thereof in German money, calculated at a uniform rate of exchange. An amount equal to one-half of the total of the indemnities accruing to the German owners will be debited to the credit existing in the name of the Swiss Government at the "Verrechnungskasse" in Berlin. Nothing in this arrangement shall hereafter be invoked by one or the other party to this Accord as a precedent for the settlement of any Swiss claim upon Germany nor shall it be alleged that the Allied Government thereby recognized any right on the part of Switzerland to dispose of the credit above mentioned.

II

A. The Compensation Office will be empowered to uncover, take into possession, and liquidate German property.

B. The Swiss Government shall carry out this Accord in collaboration with the Governments of the United States, France, and the United Kingdom. For this purpose there shall sit in Berne or Zurich a Joint

Commission composed of representatives of each of the four Governments, which shall act by majority vote. The functions of the Joint Commission are enumerated below.

C. The Compensation Office and the Joint Commission will enter upon their functions as soon as possible after the coming into force of the Accord.

D. The Compensation Office will exercise its functions in collaboration with the Joint Commission. It will keep the Joint Commission periodically informed about its activities; it will reply to inquiries submitted by the Joint Commission relative to the common objective, i. e., the uncovering, the census, and the liquidation of German property. The Compensation Office will consult the Joint Commission before making important decisions. The Compensation Office and the Joint Commission shall place at the disposal of each other all information and documentary evidence likely to facilitate the accomplishment of their tasks.

E. The Compensation Office shall as hitherto investigate the locus and status of items of property suspected by it or reported to it by the Joint Commission as being or believed to comprise a German property, or to be of doubtful or disputed bona fide Swiss ownership. The conclusions of the Compensation Office will be discussed with the Joint Commission.

F. The Compensation Office will settle, in general or particular, in consultation with the Joint Commission, the terms and conditions of sales of German property, taking into reasonable account the national interests of the signatory Governments and those of the Swiss economy together with the opportunity of obtaining the best price and of favoring freedom of trade. Only persons of non-German nationality who are in a position to present suitable guarantees will be permitted to participate in the purchase of such property, and all possible measures will be taken to prevent resales to German persons.

III

If the Joint Commission after consultation with the Compensation Office is unable to agree to the decision of that office, or if the party in interest so desires, the matter may within a period of one month, be submitted to a Swiss Authority of Review. This Authority shall be composed of three members and shall be presided over by a Judge. This review will be administrative in form and the procedure shall be prompt and simple. The decisions of the Compensation Office, or of the Authority of Review, should the matter be referred to it, shall be final.

Nevertheless, if the Joint Commission is in disagreement with any decision of the Authority of Review, the three Allied Governments may, within one month, require the difference to be submitted to arbitration as follows: if the difference concerns matters covered by the Accord or the Annex or their interpretations, the difference may, if the Allied Governments desire, be submited to an Arbitral Tribunal. This Tribunal shall be composed of one member designated by the three Allied Governments, a member designated by the Swiss Government, and a third member designated by the four Governments. Any such difference which is not of primary importance may, if the Joint Commission and the Compensation Office agree, be submitted

for decision to the member of the Tribunal who has been designated by agreement of the four Governments, who in such cases will sit as the Arbitral Tribunal.

The Arbitral Tribunal will not be restricted as regards the nature or proof of evidence produced before it and will have full jurisdiction to consider all matters of fact or law submitted to it.

The decision of the Arbitral Tribunal shall be final.

The expenses of the Arbitral Tribunal shall be a charge on the proceeds of the liquidation of German property, before their divsion.

IV

A. The term "property", as used in the Accord and this Annex, includes all property of every kind and description and every right or interest of whatever nature in property acquired before the first of January, 1948. For the purposes of the Accord sums paid or payable by persons in Switzerland through the German-Swiss Clearing shall not be regarded as German property.

B. The expression "Germans in Germany" means all natural persons resident in Germany and all juridical persons constituted or having a place of business or otherwise organized in Germany, other than those organizations of whatever nature the ownership or control of which is held by persons who are not of German nationality. Appropriate measures will be taken to liquidate the interests in Switzerland which German nationals resident in Germany have through such organizations and equally to safeguard substantial interests of non-German persons which would otherwise be liquidated.

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Extract from the

ALLIED-SWISS ACCORD OF AUGUST 28, 1952

* * * * * * *

ARTICLE 1

The Swiss Government shall without delay pay in favor of the Three Governments into an account to be opened with a banking institution designated by the Three Governments the sum of Swiss Francs 121,500,000, which, under the terms of the Swiss-German Agreement, will be paid to the Swiss Government by the German Federal Government within two weeks after the receipt by the German Federal Government of notification of the entry into force of the present agreement, subject, however, to the deduction from said sum of Swiss Francs 20,000,000 which have been advanced by the Swiss Government in accordance with Section V of the Annex to the Washington Accord.

When payment into the designated account is made, the obligations of all parties to the Washington Accord with respect to German assets in Switzerland which are owned by persons who are resident in the German Federal Republic and in the Western Sectors of Berlin shall

be regarded as discharged and the provisions of the Accord and the Annex thereto shall cease to have effect with respect to such assets, and the claims of the Three Governments and of the governments on whose behalf they are acting to such assets shall be regarded as finally settled.

The provisions of this agreement shall be without prejudice to the position of any country, party to this agreement, respecting the application, interpretation and fulfillment of such provisions of the Washington Accord as are not affected by this agreement.

* * * * * * *

ARTICLE 3

The terms of this agreement and of the Swiss-German Agreement, shall be without prejudice to any position which a country that is a member of the Inter-Allied Reparation Agency may take respecting any inter-custodial agreement concluded or to be concluded between the Swiss Government and such country.

ARTICLE 4

Nothing in this agreement or in the Swiss-German Agreement shall be deemed to confer upon any person or government rights regarding any property under the jurisdiction of any country which was at war with Germany after September 1, 1939.

* * * * * * *

EXCHANGE OF LETTERS CONTEMPORANEOUS WITH THE ALLIED-SWISS ACCORD OF AUGUST 28, 1952

BERN, SWITZERLAND, *August 28, 1952.*

MR. WALTER STUCKI,
Minister Plenipotentiary,
Chief of the Swiss Delegation,
Bern, Switzerland.

DEAR MR. MINISTER:

The Governments party to the Washington Accord of May 25, 1946, have disagreed regarding a number of points arising under that Accord. It had been the hope of these Governments that in the recent negotiations for the resolution, among other things, of the problem of German assets in Switzerland, means would be found by which the existing disagreements could be resolved. This has not been possible in every respect.

The parties to the Accord have now entered into a further agreement. It seems desirable that the parties should recognize that the disagreements with respect to Articles IV and VI of the Washington Accord and the principles of law involved, do still exist and that the agreement reached today does not resolve them. It should be understood that the respective positions of the Governments of the countries who are party to the Accord, with respect to Articles IV and VI and

the principles of the law involved, remain the same as expressed in the past.

We would appreciate an expression of your concurrence.

For the Government of the French Republic:

_____.

For the Government of the United Kingdom of Great Britain and Northern Ireland:

_____.

For the Government of the United States of America:

_____.

LE DELEGUE DU CONSEIL FEDERAL,
POUR DES MISSIONS SPECIALES,
Berne, August 28, 1952.
Thunstrasse 50.

Confidential

To the CHIEFS OF THE ALLIED DELEGATIONS,
Berne.

GENTLEMEN,

I have received your letter of this day reading as follows:

"[See preceding letter]"

I have the honor to confirm to you my Government's concurrence with the statement set forth above.

Sincerely yours,

LE DELEGUE.

LE DELEGUE DU CONSEIL FEDERAL,
POUR DES MISSIONS SPECIALES,
Berne, August 28, 1952.
Thunstrasse 50.

Confidential

To the CHIEF OF THE DELEGATION OF THE UNITED STATES,
Berne.

SIR,

In determining the contribution to be paid for the release of assets covered by article 18 (1) 3 of the Swiss-German Agreement concerning German property in Switzerland the Swiss authorities are prepared to take into account American interests in such companies, provided they amount to 25% or more and provided they already existed on February 16, 1945. In such cases the contribution will be reduced accordingly.

The Swiss Government expresses the firm hope that the American authorities will in turn protect similar Swiss interests in assets in the United States belonging to such companies, without the need of a judicial procedure in each case.

Sincerely yours,

_____.

BERN, SWITZERLAND, *August 28, 1952.*

Mr. WALTER STUCKI,
Minister Plenipotentiary,
Chief of Swiss Delegation,
Bern, Switzerland.

DEAR MR. MINISTER:

I have the honor to acknowledge receipt of your letter of this day reading as follows:

"[See preceding letter]"

The contents of this letter have been duly noted.

For the Government of the United States of America:

BERN, SWITZERLAND, *August 28, 1952.*

Mr. WALTER STUCKI,
Minister Plenipotentiary,
Chief of the Swiss Delegation,
Bern, Switzerland.

DEAR MR. MINISTER:

With reference to the agreement between the Swiss Confederation and the German Federal Republic concerning German property in Switzerland, which was signed on August 26, 1952, at Bonn, the Governments of the French Republic, the United Kingdom of Great Britain and Northern Ireland, and the United States of America desire to draw the attention of the Swiss Government to the following position of the Three Governments respecting Article 20 of the said Agreement. The Three Governments interpret the term "German property in Switzerland" which is used in the Article as not including property within the jurisdiction of any country which was at war with Germany during World War II, whether or not held or owing by any natural or juridical person in Switzerland, except to the extent such property has been or will be released to Switzerland pursuant to bilateral arrangements concluded between Switzerland and such country concerning inter-custodial problems.

For the Government of the French Republic:

For the Government of the United Kingdom of Great Britain and Northern Ireland:

For the Government of the United States of America:

○